

FO

IN THE MA
THE

ARC

FUR-SEAL ARBITRATION.

IN THE MATTER OF THE CLAIMS OF GREAT BRITAIN AGAINST
THE UNITED STATES OF AMERICA BEFORE THE
BERING SEA CLAIMS COMMISSION.

ARGUMENT FOR THE UNITED
STATES IN REPLY.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1897.

94
JX 238
F 82
1897

INTRODUCTORY

As to reflect
Representa
ain, and
Alleged "I
Comparativ

SUMMARY OF

THE INTERNATIONAL

The questi
settled b
and of co
As applied

SCOPE AND IN

Juris Natio
Constructio
Prior diplo
No ambigu
Commiss

Precedents
No other cl
Analysis o
Claims of

PERSONS IN W

VERNE UNDER

British sub
of latter
Term "Bri
Evidence o
Owes obed
And allegi

CONTENTS.

	Page.
INTRODUCTORY STATEMENT.....	1-12
<i>As to reflections upon the United States</i>	1
Representative statements in the Argument of Great Britain, and comments thereon	5
Alleged "Insults to flag," and comments.....	8
Comparative unimportance of the claims.....	11
SUMMARY OF POSITIONS IN REPLY.....	12-19
THE INTERNATIONAL LAW APPLICABLE HERE.....	19-39
The questions ruled by authoritative and positive law, as settled by treaties, judgments of international tribunals and of courts.....	19
As applied to the claims.....	20
SCOPE AND INTERPRETATION OF THE CONVENTION.....	22-39
Jurisdiction under	22, 24, 33
Construction in general	23
Prior diplomatic correspondence can not enlarge.....	23, 24, 32
No ambiguity; plain reference of specific matters to the Commission	25
Precedents and authorities.....	27
No other claims referred than those specified.....	32
Analysis of convention.....	33
Claims of specified "persons" referred.....	36, 37
PERSONS IN WHOSE BEHALF GREAT BRITAIN CAN NOT INTERVENE UNDER THE CONVENTION.....	40-66
<i>British subject domiciled in the United States a civil citizen of latter nation</i>	40
Term "British subjects" intentionally omitted.....	41
Evidence of domicile.....	43
Owes obedience to laws of the United States.....	44
And allegiance to their sovereign claims	45

**PERSONS IN WHOSE BEHALF GREAT BRITAIN CAN NOT INTER-
VENE UNDER THE CONVENTION—Continued.**

	Page.
Great Britain can not make reclamation against the United States for.....	46
Limit of Great Britain's right to intervene for protection..	49
The Treaty of 1815 covers case of.....	51
<i>Original citizens of United States even if domiciled, if not naturalized, in Great Britain, not persons for whom that nation can make reclamation.....</i>	53-66
Authorities in British Argument analyzed.....	54
Such citizens still owe allegiance to sovereign claims and extraterritorial laws of United States.....	59
Nation of domicile can not make reclamation against country of original allegiance for injuries suffered in violating such allegiance and laws.....	63
THE CLAIMS HERE NOT CLAIMS OF NATION.....	66, 84
VESSELS—REGISTRY AND FLAG NOT MATERIAL HERE.....	68-70
VESSELS—NATIONALITY FOLLOWS OWNERSHIP, NOT OWNERSHIP NATIONALITY.....	71-81
Registry by British and American authorities not conclusive against anyone except person securing it.....	73
It is a municipal regulation only.....	74
Authorities in British argument analyzed.....	79
Registry, not effective like a "sea letter" or "ship's pass"..	81
THE SPECIFIC CLAIMS ELIMINATED BECAUSE OF CITIZENSHIP, CIVIL OR POLITICAL.....	86-93
COMPENSATION OR "MEASURE OF DAMAGES".....	93-148
<i>Prospective Catch, loss of Catch, etc.....</i>	93
Prospective Catch—The Judgment of Geneva.....	94
Error in opposing argument corrected.....	94
Prospective Catch—British and American authorities.....	101
Prospective Catch—Judgments of other International Tribunals.....	105
Prospective Catch—Other judgments of the courts.....	109
Prospective Catch—Authorities in opposing argument analyzed.....	110
<i>Compensation—Warnings.....</i>	116
No prospective catch.....	116
Proper measure.....	124

COMPENSATION

<i>Punitive or</i>
<i>Alabama C</i>
<i>The charge</i>
<i>Review of</i>
<i>Preposterous</i>
<i>Experience</i>
<i>Comparison</i>
<i>Personal el</i>
<i>Claims for</i>
<i>The measur</i>
<i>Interest as</i>
<i>Interest in</i>
<i>also—leg</i>
<i>The law as</i>
THE COSTS IN
THE ADDITION
THE "OSCAR A
OBSERVATIONS
<i>The "Path</i>
<i>The "Blac</i>
<i>James Gau</i>
<i>The Carol</i>
<i>claimant</i>

UNCERTAIN CH
NO DEFINED "
DURATION OF
"METHOD FO
CUSSED
THE VALUE OF
EVIDENCE RE
<i>The Carol</i>
<i>The Thorn</i>
<i>The Onwa</i>
<i>The Anna</i>
<i>The Grace</i>
<i>The Ada</i>

CONTENTS.

III

Page.	COMPENSATION OR "MEASURE OF DAMAGES"—Continued.	Page.
	<i>Punitive or vindictive damages</i>	126
	Alabama Claims case not in point.....	126
46	The charge of wantonness.....	129
49	Review of the authorities.....	131
51	<i>Preposterous claims</i>	133
	Experience under other conventions.....	133
	Comparison with precedents.....	137
53-66	<i>Personal claims for damages for false imprisonment, etc</i>	138
54	<i>Claims for legal services</i>	141
	<i>The measure of value of seal skins</i>	141
59	<i>Interest as damages</i>	143
	Interest in lieu of future earnings and the future earnings also—legal absurdity.....	143
63	The law as to interest—authorities.....	144
66, 84	THE COSTS IN SAYWARD CASE.....	148
68-70	THE ADDITIONAL CLAIMS.....	153
71-81	THE "OSCAR AND HATTIE" CASE.....	155, 477
	OBSERVATIONS APPLYING ONLY TO LAW ON CERTAIN CLAIMS.....	156
73	<i>The "Pathfinder" in Neah Bay</i>	156
74	<i>The "Black Diamond," No. 5</i>	158
79	<i>James Gaudin's "personal" claim</i>	158
81	<i>The Carolena, Onward, and Thornton as to abandonment by claimants</i>	158
86-93		
93-148	UNCERTAIN CHARACTER OF SEAL HUNTING.....	177
93	NO DEFINED "SEALING GROUNDS" IN BERING SEA.....	209
94	DURATION OF THE SEALING SEASON IN BERING SEA.....	228
94	"METHOD FOR COMPUTING THE ESTIMATED CATCH" DIS- CUSSED.....	247
101	THE VALUE OF SEAL SKINS.....	258
105	EVIDENCE RELATING TO VALUE OF VESSELS.....	265
109	<i>The Carolena</i>	303
	<i>The Thornton</i>	305
110	<i>The Onward</i>	308
116	<i>The Anna Beck</i>	310
116	<i>The Grace and the Dolphin</i>	314
124	<i>The Ada</i>	315

	Page.
PERSONAL CLAIMS OF CAPTAINS AND MATES	319
THE CAROLINA	337
THE THORNTON	357
THE ONWARD	364
THE FAVOURITE	369
- THE BLACK DIAMOND (1886)	375
THE W. P. SAYWARD	382
THE ANNA BECK	388
THE ALFRED ADAMS	392
THE GRACE AND THE DOLPHIN	395
- THE ADA	402
THE TRIUMPH (1887)	408
THE JUANITA	414
THE PATHFINDER (1889)	418
THE BLACK DIAMOND (1889) AND THE LILY	423
THE MINNIE	437
THE TRIUMPH (1889)	442
THE ARIEL	447
THE KATE	457
THE PATHFINDER (1890)	462
THE HENRIETTA	466
THE OSCAR AND HATTIE	477
THE WINIFRED	484
THE WANDERER	490

ARGUMENT

In submitting
in reply to the
Britain, the
orderly and c
as may be the
as found in th

The couns
when their co
up in a com
by these two
self-respect, it
fest not only
the temple.

They asser
no juridical p
interpretation
the Conventio
questions of l
bar, by imput
States, insinu
ministers, and
against the Go
of Great Brit

ARGUMENT FOR THE UNITED STATES IN REPLY.

INTRODUCTORY STATEMENT.

In submitting their views to the High Commission, in reply to the argument presented in behalf of Great Britain, the undersigned will, for the purposes of orderly and convenient comparison, pursue as nearly as may be the nomenclature and sequence of subjects as found in the British argument.

The counsel of the United States conceive that when their country comes to this place of justice, set up in a common spirit of good will and friendship by these two great nations of equal dignity and equal self-respect, it should find that spirit abiding and manifest not only at the altar but in all the ministers of the temple.

They assert before the Tribunal at the outset, that no juridical purpose can be served, either by way of interpretation of its organic law and rule of action—the Convention of 1896—or of its enlightenment on the questions of liability or compensation presented at its bar, by imputations upon the good faith of the United States, insinuations against the truthfulness of their ministers, and charges of wantonness and evil motive against the Government. These pervade the argument of Great Britain from its introduction until the close of

its general discussion. They are statements of prominent and impressive irrelevance. They are at war with the spirit of arbitration, and the tendency of their influence is against the general acceptance of that policy for the peaceful settlement of international disputes, through courts of conciliation, which is said by good men of all nations to be the universal desire of advanced humanity and the highest civilization.

There has been, doubtless, some progress toward the accomplishment of that wish, so vigorously professed by some, and so sincerely felt by others.

However that may be, the annals of forensic and even of judicial discussion in courts of international arbitration within the past three and a half decades have certainly not furnished impulse to the movement. To all who have faith in, and who invoke its successful issue, such annals seem to teach the lesson that in our debates in these temples of peace the advocates of both nations might with profit more often have recourse to the gentler lexicons of war.

The tradition of Fontenoy furnishes a better guide for the exchange of views between nations met together in courts of conciliation and judgment than some of their recorded precedents.*

We shall submit later on, when we take up the subject of the interpretation of the treaty and convention, that the correspondence between the Governments, fragments of which are referred to and commented on in the British argument under the caption "Introductory," is entirely irrelevant here.

It was all conducted, and relates to a period prior to the treaty of Washington of February 29, 1892, under which the Paris Tribunal afterwards sat and made its award, and, of course, many years prior to the treaty or convention under which this Commission sits.

* See Geneva Arb., vol. 2, p. 203; Id., vol. 3, p. 48x; vol. 4, p. 12, sec. 7. Papers, Treaty of Washington.

Whatever have been discussed between the treaty, the other reasons place, the U at the hearing to encumber dence to cor was so fully ings of the I

The concl as stated for the British a the positions erroneous, a ever to supp both Govern matic histor record.

Inasmuch, argument of of internatio leading ones many and c the whole b challenged b

In the Br statement is

(1) This cor occurred on t respecting the of State on th made for part of September, particulars re United States not before the municate the

Whatever of controversy or of differences may have been discussed in the diplomatic correspondence between the nations, they were disposed of by the treaty, the award, and the convention. For this and other reasons, which will be referred to in another place, the United States objected to its introduction at the hearing on the Pacific Coast, and declined there to encumber the record by putting in answering evidence to complete the diplomatic history here which was so fully set out in the long record of the proceedings of the Paris Tribunal.

The conclusions drawn from the correspondence, as stated for the information of the commissioners in the British argument, in so far as they reflect upon the positions or the conduct of the United States, are erroneous, and in many respects have nothing whatever to support them in the complete evidence of both Governments furnished by them as the diplomatic history of the subject-matter in the Paris record.

Inasmuch, however, as these statements in the argument of Great Britain will pass into the history of international affairs, it is proposed to take some leading ones from that argument as representative of many and comment upon them briefly, in order that the whole body of them may go into the proceedings, challenged by the United States.

In the British argument, at page 6, folio 50, this statement is made:

(1) This correspondence shows that although the seizures occurred on the 1st and 2d August, 1886, and *information respecting the same was received by the United States Secretary of State on the 18th of the same month*, and a request was made for particulars by the British Government on the 27th of September, no intimation as to the cause of seizure or any particulars relating thereto could be obtained from the United States Government until the 12th of April, 1887, and not before the 11th of July, 1887, did that Government communicate the precise nature of the proceedings.

It is to be observed, in connection with the statement italicized, that the implication is that Mr. Bayard, the American Secretary of State, while having the information from August 18, 1886, wrote to the British ambassador on November 12, 1886, that he had not received it, and that he withheld the information, already weeks and months in his possession, after he had received the notes of inquiry from the British ambassador of September 27, 1886, and October 21, 1886, asking for it.

It is submitted that the statement quoted from the argument of Great Britain has nothing whatever to rest upon in any place in the record or out of it.

Moreover, it appears from the testimony of witnesses on this record that the mail facilities between Alaska and the railway mail connections on the Pacific Coast with Washington were not only very irregular, but that the time was from ten days to two weeks at this period; to that must be added the time across the continent by rail from the Pacific.

Secretary Bayard states that he delivered the information desired as soon as he could give accurate and authentic information.

This was furnished with far more expedition than is usual, as shown by the diplomatic history of nations. In all the history of Great Britain's foreign relations there is not a case where there was as much expedition in like circumstances.

In the Fortune Bay cases, referred to in the British brief, Mr. Evarts submitted to Great Britain the claims of the United States, for attacks upon and damages to twenty-two vessels under the American flag, on August 1, 1879. He received a reply from Great Britain on April 3, 1880. (*Foreign Relations, Great Britain, 1880, vol. 72, p. 1277 et seq.*)

In the case of the ship *Jones* (an ocean ship with her cargo, worth more than all the property of British

subjects involved in the British umpire's Commission) a ship sailing on a probable cause, then Secretary of State, addressed a statement, setting aside attention, was no reply, no excuse was given. 1846-47, p. 1.

Nations of the world may affect territorial acquisition and here should be a case with them, they existed in this matter. (Justice of the Peace Tribunal.)

The ambassador in Washington or notes verbales. Mr. Bayard.

Of such importance but there is the ambassador Mr. Bayard furnished it in accordance with the

On page 1

(2) For manifest liability, shift of untenable position whole of which is a question whatever from their action

subjects involved in this case together), wherein the British umpire afterwards found, under the Mixed Commission of 1853, that a British cruiser had seized a ship sailing under the American flag, without any probable cause and without a shadow of excuse, our then Secretary of State, Edward Everett, in 1843, addressed a letter of complaint to the British Government, setting forth the facts and inviting the immediate attention of that Government to the case. There was no reply received for three and a half years, and no excuse was offered for the delay. (Id., vol. 35, 1846-47, p. 655 *et seq.*)

Nations do not take positions upon facts which may affect their rights and obligations without deliberation and proper investigation. The presumption here should be that Secretary Bayard acted in accordance with the usages of nations and the conditions as they existed. (It was conceded that he so acted in this matter by Sir Charles Russell, now Lord Chief Justice of England, in his argument before the Paris Tribunal.)

The ambassador of Great Britain was resident at Washington, and outside of all formal communications or *notes verbales*, was in informal communication with Mr. Bayard.

Of such interviews there is, of course, no evidence; but there is no intimation anywhere on the part of the ambassador, or of the British Government, that Mr. Bayard had withheld information, or had not furnished it with such expedition as was in accordance with usage and the circumstances.

On page 20, folio 20, we find this statement:

(2) For many years the United States have disputed their liability, shifting their ground from time to time from one untenable position to another equally unsound, during the whole of which period they have failed to make any reparation whatever to the parties who were the direct sufferers from their acts and pretensions.

And at page 10, folios 10-20, we find this statement as a premise to the above:

This correspondence (diplomatic) discloses the following positions assumed at various times by the authorities of the United States (U. S., vol. 2, pp. 263, 386, 396):

(a) The vessels seized in 1886 and 1887 were seized and condemned on the ground that Bering Sea was a *mare clausum*.

(b) Disavowing this ground, the claim was made on September 17, 1890, that the United States had exclusive jurisdiction over 100 miles from the coast line of the United States territory in Bering Sea.

(c) Subsequently on the 14th April, 1891, the United States Government advanced a new claim that they had property in, and a right of protection over, fur seals.

The citations given do not, of course, sustain this imputation.

An intimation to the same effect, though in far less objectionable form, was made before the Paris Tribunal; and we content ourselves by referring to the treatment of that intimation by the eminent counsel who there represented the United States, at page 29 *et seq.* of volume 9 of the American print of the proceedings of that Tribunal.

On the latter part of the first paragraph of (2) above quoted we make this comment:

Notwithstanding the statement impliedly to the contrary there made, and expressly made at page 14, folio 10 ("Particulars of claims had been formulated and presented to the United States Government"), and at page 15, folio 30 ("The claims actually submitted by Great Britain referred to in the notes verbales"), Great Britain, in distinct departure from her own precedents and from the rules of international law in such cases, where one nation seeks indemnity from another for injury to persons or property, never caused the claims to be audited or formulated in any manner for presentation to the United States, and never presented them.

On the contrary on April 18, 1888, as appears by the

record, Her Majesty's Government communicated to Mr.

Her Majesty's Government the claims of the sealers seized in Bering Sea.

A just assessment of the claims without investigation would be dispensed with to ascertain the truth.

The claim of the Paris Tribunal, the meaning of the Government's claim, the question, and the attitude of the flag of the United States.

On the contrary, the respect of the United States Government obtained with respect to the flag of the United States, presenting a wrong was conceded to remain in a national and the dictation of the Bering Sea.

The great dictation; and creating the ability of the seizure which both interrupt or the nation of the

record, Her Majesty's ambassador formally communicated to Mr. Bayard the following (Rec., p. 69):

Her Majesty's Government have just received the particulars of the claims for compensation on account of British sealers seized and warned off by the United States authorities in Bering Sea.

A just assessment of these claims appears to them difficult without investigation and verification; and they therefore wish to ascertain whether the United States Government would be disposed to agree to a mixed commission, etc.

The claims were not presented in any form until the Paris Tribunal came together in 1893; and in the meantime negotiations were pending between the Governments wherein the position of the United States, claiming jurisdiction to make the seizures in question, and denying their liability for making them, was not challenged by Great Britain as the attitude of a "wanton" trespasser, or as "an insult to the flag of Great Britain."

On the contrary, without following the practice in respect of such alleged injuries, which had always obtained where right was asserted by one and wrong against it by the claiming nation, of auditing and presenting the claims, the question of right and wrong was considered so doubtful that Great Britain conceded that compensation to British subjects should remain in abeyance pending the settlement by international arbitration of the question of the jurisdiction of the United States to protect the seals in Bering Sea.

The great question was the question of that jurisdiction; and so, in Article VIII of the treaty of 1892, creating the Paris Tribunal, the question of the liability of the United States to make compensation for the seizures was treated in terms as "subordinate," which both countries were solicitous "should not interrupt or longer delay the submission and determination of the main questions."

(a) In all the history of that great nation the flag of Great Britain, respected throughout the world for the power behind it, and more respected by strong nations of all civilizations for what it represents besides the force of arms, has never been insulted with impunity; and never before in her history has it been suggested by her, much less to her, that she should make amends for such an insult could be arbitrated or referred, or that a money compensation for the act, assessed by referees of whatever dignity, would be received as satisfaction.

The irrelevancy of the statement in its bearing on the question of damages will be considered later on.

(b) The charge that the United States had been guilty of a breach of faith that is here made was never intimated in the diplomatic correspondence between the Governments. Promptly on learning that a misunderstanding was claimed on the part of Her Majesty's representative on the subject of seizures, Mr. Bayard, on August 13, 1887, corrected the misunderstanding, if there was one, and made his statement in that letter, which is fully justified by an examination of the correspondence (Rec., 81):

I can discover no ground whatever for the assumption by Her Majesty's Government that it (his letter of February 3, 1887) contained assurances (quoting from the letter of the British ambassador) "that pending the conclusion of discussions between the two Governments on general questions involved, no further seizures would be made by order of the United States Government."

On page 1, folio 5, appears this statement:

(4) Until the year 1886 the United States Government by no positive act sought to exercise any exclusive jurisdiction over the waters of Bering Sea beyond the usual territorial limit; nor did they by any active interference intimate to Great Britain or to other foreign powers their intention to claim special or exclusive authority to prevent the capture of fur seals in Bering Sea outside of such limit.

The reference to the record opposite this paragraph does not sustain it. The reference is to the statement of the British case before the Paris Tribunal, and is entitled, "Outline of Argument."

It appears by this record, on the evidence put in by Her Majesty's Government, that the first ship to engage in pelagic sealing was an American vessel that went into the sea in 1884. It was not claimed before the Paris Tribunal that any British ship was in the sea before that year.

It is not pretended by Great Britain that there was any assertion by that nation or her subjects of the right to take seals in Bering Sea, as contested by the United States, before 1885; and it appears that the assertion of the right by Great Britain, or by her subjects, was not brought to the attention of the United States Government or its officers until after the close of the season of 1885.

Sir Charles Russell, in his argument at Paris, quotes the statement of Secretary Blaine as follows, from his dispatch on the subject of British sealing, dated January 22, 1890, where he says:

Whence did the ships of Canada derive the right to do in 1886 that which they had refrained from doing for more than ninety years?

In all fairness to both nations, after all issues of fact have been investigated and resolved by the Paris Tribunal, it should be stated that from the date of acquirement of Alaska in 1867 until, by reason of what took place, in the year 1885 the question of pelagic sealing or the jurisdiction of the United States in the premises was not asserted against Great Britain, for the simple reason that the latter Government or its subjects had not challenged that jurisdiction or interfered with the exclusive control by the United States of seal fishing, as claimed in Bering Sea, at Paris. The jurisdiction was asserted as soon as substantially infringed

Owing to the
lled in the tre
e United Sta
onal question
r losses to I
importance out
lited into view
oversy, a few
subject of prol
ations, resultin
composed of j
arning, to ma
on questions
ese as subject
With the gr
disposed of at
homsoever th
at the few cl
onsidered her
ruous dignity
has seemed t
he sea by the
true, but th
Britain. They
he United St
f the subjects
Confusing t
ssumed that a
ates in Ber
f its own shi
British subje
ignity to th
resented her
unlawfully b
American citi
Great Britain
actual British

Owing to the gravity and magnitude of what is called in the treaty the "Main Controversy" between the United States and Great Britain, the international question of jurisdiction, the claims involved for losses to British subjects have been given an importance out of all proportion to their significance. Brought into view by the supreme feature of the controversy, a few small fishing boats have been the subject of prolonged negotiation between two great nations, resulting in the organization of a High Court, composed of jurists of distinguished position and learning, to make an assessment of values and pass upon questions, involving, in the case itself, only these as subjects.

With the great question taken from under them, disposed of at Paris, and out of view, it will seem to whomsoever this record comes, and who masters it, that the few claims and their subjects, which can be considered here at all, have been given a most incongruous dignity; and, too, from the outside standpoint, it has seemed that great fleets have been driven from the sea by the United States from year to year. This is true, but they have not been the fleets of Great Britain. They have been the vessels of citizens of the United States, in the proportion of loss to that of the subjects of Great Britain as a thousand to one.

Confusing this distinction, the public mind has assumed that all the results of the action of the United States in Bering Sea (action substantially in respect of its own shipping and its own citizens) fell upon British subjects. This also has given a factitious dignity to these claims. When from the claims presented here there are thrown out those urged unlawfully because of their actual ownership by American citizens, who can not be represented by Great Britain under this convention, the residuum of actual British losses will be found small indeed.

It is obvious, however, that the smallness of the amount involved in nowise detracts from the importance of the international questions.

A sense of their professional duty to the Commissioners, who have consented to add to the exacting responsibilities of the high places they hold in the judiciary of their respective countries, that of mastering and disposing of the international controversies embraced in this enormous record and its adjuncts has impelled the counsel for the United States to endeavor to aid them with all that conscientious research and analysis on the law and the facts can afford.

If, in the result of this purpose, it should seem that any excuse is needed for the space taken in gathering and presenting the evidence under the several heads, with intelligible and orderly references, that excuse may be at once found by comparing with the record, in any one instance, the statements under any caption whatever, in the British argument, treating of the facts.

SUMMARY OF THE POSITIONS OF THE UNITED STATES IN REPLY.

At this place we submit brief synopses or headnotes of the leading positions taken in the argument of the United States, hereafter presented at length, in reply to the juridical positions of Great Britain on like subjects.

I.

International law furnishes the standard for the interpretation of treaties and conventions and is the law of this Commission.

SUMMA

The scope of
and limited by
and the docum
part of it by ex
body. The
applicable here
to extrane
The claims
exchangeably
convention,
aim. The na
article I, Great
is Commission
the convention,
claimants by t
permitted, and
specific provisi
defense, as the

As to compe
same attitude
el before the P
maintained bef
their liability b
res to pay co
of all persons
tled to claim
and to pay tha
the proper am
Moreover, t
in the amount
amount of the
re responsibl
ate any such
ially under t
owner is to be

The scope of the convention in this case is defined and limited by the language of the convention itself and the documents, which, by its terms, are made a part of it by express reference and identification in its body. The international law of interpretation applicable here neither requires nor permits any reference to extraneous matter.

The claims referred to this Commission are thus unchangeably pointed out and definitely described in the convention, except only as to the amount of each claim. The names of the "persons" for whom, under article I, Great Britain can claim compensation before this Commission are as unchangeably pointed out by the convention, except only as to them, so named as claimants by the convention, the United States are permitted, and that nation alone is permitted, by a specific provision, to inquire into their identity, in defense, as the actual owners of the vessels seized.

II.

As to compensation, the United States hold to the same attitude now that was announced by their counsel before the Paris Tribunal and has been consistently maintained before this High Commission, namely, that their liability having been fixed, the Government desires to pay compensation to Great Britain on account of all persons "in whose behalf Great Britain is entitled to claim compensation from the United States," and to pay that compensation at the earliest time when the proper amount can be ascertained.

Moreover, the United States want no compromise in the amount of compensation on values, and the amount of the injury inflicted by them for which they are responsible under the Paris award. They deprecate any such method of arriving at an award, especially under this convention, where the claim of each owner is to be found separately.

It can not but occur to anyone, however, when the amounts are compared for the same claims made up for the Paris Tribunal with those presented at the hearing in Victoria, and again when both are compared with the claims now presented in the argument, that the claimants do not share these views as to compromise.

The change of front at Victoria on the measure of recovery, the evidence of the padding, duplicating and doubling of claims, the experience of other commissions and tribunals with like claimants, which are hereafter referred to, tend to demonstrate that the amounts are presented at such preposterous figures in order—if they are taken as a basis of calculation at all—that their reduction of half or more would still give a result out of all proportion to the truth.

III.

A foreigner permanently domiciled in the United States like the claimant Cooper, although unnaturalized, owes during the duration of his domicile allegiance to their Government, obedience to their municipal laws, and especially to their national assertion of what is variously termed dominion, sovereignty, or jurisdiction.

Non constat such a person may owe original allegiance to Great Britain, and *non constat* he puts his ships under a British flag and a British registry, he is still a resident of the United States, and so amenable to their laws and absolutely bound by their assertion of sovereignty.

Whatever questions there may be as to violations of national dignity, of the flag, and the ship (wholly questions of dignity between nations), in such case he is not a person who can enter any municipal court, much less an international commission on claims, and

set up that he Britain is entitled "United States" common with o more amena acts against th laws of their c have suffered.

Aside from c ability of the high seas, sover territory on lan that this asserti of national dign is distinctly di of the private same nation, in court before h of the flag an

other nations courts of admini court ever hel private ownership On the cont foreign ships, nation, passing conclusively h

A citizen of or domiciled, Britain, is still United States

(a) Their a over territory (b) All mun

set up that he is a person "in whose behalf Great Britain is entitled to claim compensation from the United States" for injuries which he has suffered in common with other civil citizens of the United States, and that he is more amenable to their laws, for doing the same acts against the policy of the sovereignty and the laws of their common Government, for which they have suffered.

Aside from questions having to do with the inviolability of the flag and of the deck, where, on the high seas, sovereignty is said to be present as upon its territory on land, there is no doubt by the authorities that this assertion in its extremest form is one entirely of national dignity, in respect of the sovereignty itself, and is distinctly distinguished from the claim on account of the private ownership of a ship made by the same nation, in respect of a subject or citizen. In no court before has it been claimed that the immunity of the flag and of the deck from molestation by other nations on the high seas carried with it in the courts of admiralty anywhere, or in any international court ever held, any exclusive presumption of private ownership.

On the contrary, in the courts of England as to foreign ships, and in the courts of every civilized nation, passing the question of national dignity, it is conclusively held that *nationality follows ownership*.

IV.

A citizen of the United States, wherever resident or domiciled, until he becomes naturalized in Great Britain, is still bound to his original allegiance to the United States in respect of—

- (a) Their assertion of jurisdiction and sovereignty over territory or property.
- (b) All municipal laws having an extraterritorial effect.

The right of the nation to protect a domiciled person, even in time of war, much less in time of peace, has never been asserted in favor of such person as against his nation of citizenship for the consequences of his violation of the law of his country in time of peace, or his positive violation of his allegiance in time of war.

The maintenance of the rights of domicile in the history of international law, as will be seen, shows—

(1) Frequent assertions of protection in time of peace against all other nations *except the nation of original allegiance*; and in the applicable principles laid down by the authorities this exception will always be found in terms.

(2) In war a person domiciled in a neutral country will be protected in his property and his person, even as against his own belligerent country, always provided he has not violated the law of his original allegiance and has not engaged in any hostile act against his country. In other words, to be protected by the Government of the neutral in such conditions, it must appear that he has maintained the status of the Government of his domicile as to neutrality.

By these well-settled doctrines of international law, by the treaty of Washington, the Paris award, and this convention, citizens of the United States, wherever domiciled or commorant, are not persons "in whose behalf Great Britain is entitled to claim compensation from the United States."

V.

The law of "compensation" in cases of this kind is *restitutio in integrum*.

By the English and American law, and above all, by what must be taken in this tribunal as its authority in international law, in cases of precise analogy to

this, prospectively allowed to Great Britain.

In any case, the vessel was appropriated the vessel's rights relating to the seizure of the release of the property on the intention of the property to be released.

The theory of such cases that have supplied the time of seizure of property seized by the measure of compensation.

In the case of the Government, the cause of them, the nature of the sealing season, the here are in like those apparently, however, facts sustain a Warnings.

Claims for national claim, viz, such as the inviolability of the respect due to the sovereign's territory. Under international law, no nation

this, prospective profits and loss of catch can not be allowed to Great Britain by this Commission:

In any case (a) where the United States appropriated the vessel by seizure, or by ultimate proceedings relating back to the seizure; or (b) in any case of seizure where the United States ordered a release, if the release was not accepted, or if the facts disclosed an intention on the part of the claimants to abandon the property to the United States before the following season.

The theory and presumption must be applied in all such cases that the claimants had the means and could have supplied the place of the property seized at the time of seizure. In other words, the value of the property seized at the time of seizure is the only measure of compensation.

In the case of Warnings made by the United States Government, and actual departure from the sea because of them, a liberal allowance must be made in the nature of the charter value for the balance of the sealing season in Bering Sea only. The rules applying here are in principle like those of demurrage, or like those applying in cases of partial loss. Practically, however, there are but two cases where the facts sustain any considerable claim as resulting from Warnings.

VI.

Claims for national injuries, distinguished from national claims made in behalf of subjects or citizens, viz, such as may arise from acts in derogation of the inviolability of the flag, the dignity of the sovereign, the respect due to the jurisdiction of the sovereign, and the like, committed on the high seas, or on that sovereign's territory, are not before this Commission. Under international law and by international precedent no nation has yet claimed to recover damages

for such acts, for distribution among claimants, nor has any nation ever referred such questions to arbitration or commissioners for a damages assessment. Moreover, claims for "smart money" or for satisfaction of national affronts, if any occurred, are not claims of "persons" within Article I of this convention, "in whose behalf Great Britain is entitled to claim compensation from the United States."

VII.

There is no warrant in international law for the allowance of punitive or vindictive damages as between nation and nation. There is no authoritative judgment in the courts of either country which would authorize a finding that the United States on the facts in this record have been guilty of "wanton injury," bad motive, or malice, and the authorities cited in the British argument under these heads are not in point.

VIII.

The claims that are presented, which can be heard within the terms of the convention, for the most part, have been so grossly exaggerated that they are preposterous and extortionate, and wherever such claims have been made willfully or corruptly extravagant the claimants are entitled to the lowest estimate of compensation found within the covers of the record.

IX.

By the rules of the common law of the two countries and of international law, interest, as claimed, can not be allowed in the class of cases presented to this Tribunal.

The costs in because (a) the Great Britain adjustment of expressly excluded its reference embraced and bunal, which a feelings of the the term "costs" attached to the or enlarge the which exclude within Article injuries sustained Britain is entitled the "additional" of the preamble

INTERPRETATION

SCOPE AND

In this context, weighed In pursuing the United States attainment of where, to resort treaties and judgments are universal and judgment publicists admitted Britain.

X.

The costs in the Sayward Case can not be allowed, because (a) they were confessedly disbursements by Great Britain incurred by that Government in the adjustment of an international difficulty; (b) they are expressly excluded from the Convention in terms by its reference to the claims referred as those only embraced and named in the award of the Paris Tribunal, which award excludes this claim, as do the Proceedings of the Paris Tribunal; (c) the interpolation of the term "costs in the Sayward Case" in the schedule attached to the convention can not control, modify, or enlarge the express provisions of the convention, which exclude it; and (d) it is not a claim embraced within Article I, namely, "all claims on account of injuries sustained by persons in whose behalf Great Britain is entitled to claim compensation," or one of the "additional claims specified in the fifth paragraph of the preamble hereto."

INTERNATIONAL LAW APPLICABLE.

SCOPE AND INTERPRETATION OF THE CONVENTION.

In this controversy all questions must be considered, weighed, and decided by international law.

In pursuing their argument under this convention the United States do not find it necessary, in the ascertainment of what principles of that law are applicable here, to resort to any sources of authority except treaties and judgments of international courts, which are universally held to be of the most binding force, and judgments and opinions of eminent jurists and publicists admitted to be authoritative by Great Britain.

For other sources of light, from the copious learning of the world, reference is made, without any future recurrence to them, to the collection of authorities found in the exhaustive argument of Mr. Carter before the Paris Tribunal, American print, vol. 9, pp. 1-10 *et seq.*

Whatever international law may be in its broadest definition, we have it for application here in positive form. Whatever it may be in its application to the controversy between these two nations, it is not, as Burke said of politics, "The science of circumstances."

The United States do not expect here a different application of the rules of international law from those which have been applied to their disadvantage in their past history, nor will they seek a reversal of those rules which they have heretofore successfully invoked to their advantage, although their application to the present controversy would be unfavorable to them.

THE LAW APPLYING TO THE CLAIMS.

In defining what is meant by international law by consent, Phillimore gives the following:

(1) The consent of nations is evidenced by the contents of treaties, which, for this as well as for other reasons, constitute a most important part of international law.

(2) The consent of nations is also evidenced by the decisions of the prize courts and the tribunals of international law sitting in each country. (See I Phillimore, XLIX, p. 46, and *id.*, p. 55, LVII, with very full consideration of authorities from Lord Stowell down—English and American.)

Vattel divides the authentic sources of international law into voluntary, conventional, and customary laws. Wheaton divides the voluntary law of nations into conventional law and customary law, the former being introduced by treaty, and the latter by usage; the former by express consent, and the latter by

tacit consent h
Halleck on In

See *Id.*, Vol
mission:

Greater weight
mixed tribunals
States between
admiralty court
measure on, the

The munic
referred to only
principles against
Baker's Halle

The law of
municipal law
relating to Trea
award, *id.*, p.

And Phillin
54) of the pu

These furnish
afterwards dep
deliberately inv
size the fact t
regulate and c
State. (See "S
of Nations, sec.

There can
authorities on

In the presen
recognizes the
acknowledges r
ples, we must n
from history, th
of tribunals, in
and to determin
tion. Some of
for ages, and h
will now ventur
ston Baker's H

tacit consent between nations. (Sir Sherston Baker's Halleck on International Law, Vol. I, 3d ed., p. 52.)

See Id., Vol. I, p. 59, citing decision of mixed commission:

Greater weight is justly attributable to the judgments of mixed tribunals, *appointed by the joint consent of the several States between which they are to decide*, than to those of admiralty courts established by, and dependent in some measure on, the instructions of a single State.

The municipal laws of particular States *can be referred to only as particular admissions of general principles against the State enacting them*. (Sir Sherston Baker's Halleck, Vol. I, p. 59.)

The law of nations is absolutely independent of municipal laws. (Opinion of arbitrators, Papers relating to Treaty of Washington, Vol. 4, pp. 59-104; *award, id.*, p. 51.)

And Phillimore says (Int. Law, Vol. I, sec. 55, p. 54) of the public documents of a nation that—

These furnish decisive evidence *against any State* which afterwards departs from the principles which it has thus deliberately invoked, and in every case thus clearly recognize the fact that a system of law exists which ought to regulate and control the international relations of every State. (See "Santa Cruz," I C Rob. Adm., 61; Polson, Law of Nations, sec. 3; I Halleck, p. 60.)

There can be no better summing up from all the authorities on this subject than the following:

In the present imperfect state of international law, which recognizes the obligatory force of no written code, and acknowledges no permanent judicial expositor of its principles, we must necessarily resort to the precedents collected from history, the opinions of juriconsults, and *the decisions of tribunals*, in order to ascertain what these principles are, and to determine what are the proper rules for their application. Some of these principles and rules have been settled for ages, and have the force of positive laws which no one will now venture to dispute or call into question. (Sir Sherston Baker's Halleck, Vol. I, p. 59.)

Decisions of municipal courts are received with the same limitations as above given as to municipal laws; i. e., they are taken against the nation of decision. (I Halleck, p. 61.)

Of text writers the same rule. The works of text writers, when there is a general concurrence of views (I Kent Com., Vol. I, p. 19), but particularly if the text writers and authority be of the country asserting the contrary doctrine, the authority should be received. (Sir Sherston Baker's Halleck on Int. Law, Vol. I, pp. 60-61.)

In the language of Phillimore:

If the authority of Zouch, of Lee, of Mansfield, and, above all, of Stowell, be against the demand of England; if Valin, Domat, Pothier, and Vattel be opposed to the pretensions of France; if Grotius and Bynkershoek confute the claim of Holland, Puffendorf that of Sweden; if Heineccius, Leibnitz, and Wolff array themselves against Germany; if Story, Wheaton, and Kent condemn the act of America, it can not be supposed (except, indeed, in the particular epoch of a revolution, when all regard to law is trampled under foot, that the *argumentum ad patriam* would not prevail; at all events, it can not be doubted that it *ought* to prevail, and should the country, relying upon such authority be compelled to resort to arms that the guilt of the war would rest upon the antagonist refusing to be bound by it. (Phillimore Int. Law, Vol. I, sec. 60; Triquet et al. v. Bath, 3 Burr. R., pp. 14-80; I Halleck, p. 61.)

INTERPRETATION AND SCOPE OF THE CONVENTION.

Before proceeding to a consideration of the treaty or convention under discussion, some settled rules regarding the interpretation and scope of treaties are here cited.

Regarding treaties like this for the peaceful settlement of disputes, Sir Sherston Baker's Halleck on International Law (3d edition, Vol. I, p. 467) says:

If the contending parties have agreed to abide by the decision of these referees, they are bound to do so, except in

cases where the
fixed within the
in the agreement
to be decided by
bounds and pret
mitted to them,
the award of the
treaty, in 1827,
of the United S
submitted to h
regarded as bin
Britain, and wa

The meani
ascertained b
reasoning wh
statutes and p
Wheaton Ele
and p. 355; I

To go outsi
is to endeavor
Gens, Liv. II,
I, sec. 39, p.

Greenleaf s
321):

When parties
writing in such
any uncertainty
ment, it is conc
of the parties,
ing, was reduce
vious colloquid
declaration at
as it would ten
different contra
to the prejudic

The first n

It is not allo
pretation, for
terms, and the
there can be n
rally presented

cases where the award is obtained by collusion, or is not confined within the limits of the submission. It is usual to specify, in the agreement to arbitrate, the exact questions which are to be decided by the arbitrators, and if they exceed these precise bounds and pretend to decide upon other points than those submitted to them, their decision is in no respect binding. Thus, the award of the King of the Netherlands, on reference by treaty, in 1827, of the question of the northeastern boundary of the United States, not being a decision of the question submitted to him, but a proposal for a compromise, was not regarded as binding either upon the United States or Great Britain, and was rejected by both. * * *

The meaning of treaties of every kind is to be ascertained by the same rules of construction and reasoning which we apply to the interpretation of statutes and private contracts. (I Kent Com., p. 174; Wheaton Elements Int. Law, Pt. III, chap. 2, sec. 17, and p. 355; I Halleck, p. 206.)

To go outside of the treaty in search of conjectures is to endeavor to elude it. (Vattel, Le Droit des Gens, Liv. II, Ch. XVII, secs. 263-298; Halleck, Vol. I, sec. 39, p. 297.)

Greenleaf says (Greenleaf on Evidence, Vol. I, p. 321):

When parties have deliberately put their engagements into writing in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, was reduced to writing; and all oral testimony of a previous colloquium between the parties, or of conversation or declaration at the time when it was completed or afterwards, as it would tend in many instances to substitute a new and different contract for the one which was really agreed upon, to the prejudice, possibly, of one of the parties, is rejected.

The first maxim of Vattel is:

It is not allowable to interpret what has no need of interpretation, for when a treaty is conceived in clear and precise terms, and the sense is manifest, and leads to no absurdity, there can be no reason for refusing the sense which is naturally presented and manifest. To go elsewhere in search of

conjectures is to endeavor to elude it. (Vattel, *Le Droit des Gens*, Liv. II, Ch. XVII, secs. 263-298; Halleck, Vol. I, 297.)

The whole treaty must be considered together, and an interpretation given to each particular expression so as to agree with the tenor of the whole instrument. (Vattel, *supra*; Halleck, Vol. I, 298.)

Vattel says:

In order to obviate all difficulty it is necessary that the arbitration articles should precisely specify the subject in dispute—the demands of the one, the objections of the other * * * if then the sentence be confined within these precise grounds the disputants must acquiesce in it. (Chitty's *Vattel* (Phila.), p. 277.)

It is clear that the scope of the treaty or convention is to be limited strictly to the conferring powers of the instrument.

The decision by arbitrators must be disregarded when the tribunal has clearly exceeded the powers given to it by the instrument of submission. (Hall on International Law, 4th Ed., p. 379.)

There being no obscurity or ambiguity in this convention, reference to *notes verbales* or diplomatic correspondence, or any other extraneous matter, is not permitted, to enlarge its scope, as is attempted to be done in the British argument regarding the claims to be considered under it.

If there were obscurities on the face of the treaty itself, the rule is perfectly well settled as to contracts and treaties that the first resource for enlightenment must be to read all the parts of the treaty or contract together for a solution of the difficulty, and the second, to search the contract or treaty for any reference to extraneous matters which may give enlightenment.

The presumption is that the provisions of a treaty are intended to be harmonious, and nothing short of clear proof of intention can justify any interpretation of a single provision which brings it into collision with the undoubted intention of the remainder. (Hall on Int. Law, 4th Ed., pp. 353-354, and see p. 350.)

In this case
ings of fact of
ing, and limiti
Commissioners
this Convention
A reference in
or a map mak
cited by Sedg

It appears
XLI (Paris C
Her Majesty's
line of that fi
the proposed f
Article IX

That award be
tion, a part of
tive reference,
amble thereof,
in whose beha
tion before th
and by ever
claims. "Eac
ant" appear t
cle I, and so l
for description
to the Commi

This being
law, applicab
against the na
of this referen
must be taken

Hugo Grot
pretation mu
drafted the co
tio, qui condit

And Vattel

Here is a rule
and should exp

In this case there is express reference to the findings of fact of the Paris Tribunal as disclosing, defining, and limiting the claims which are referred to the Commissioners. Those findings are made a part of this Convention. (See Sedgwick Stat. Const., p. 229.) A reference in a statute to a prior statute, a document, or a map makes it part of the statute. (See cases cited by Sedgwick.)

It appears by this record, as well as by Protocol XLI (Paris Commission, Vol. I, U. S., p. 43), that Her Majesty's Government prepared every word and line of that finding, and that it was substituted for the proposed finding submitted by the United States.

Article IX of the award shows the same thing. That award being made, by a settled rule of construction, a part of this convention, by express and definitive reference, by date and article, in the third preamble thereof, we find that the claims and the persons in whose behalf Great Britain may claim compensation before this commission are limited by Article I, and by every subsequent article referring to the claims. "Each claim," and "on account of any claimant" appear throughout. And all refer back to Article I, and so back to the Award and Finding of facts for description and limitation of the subjects referred to the Commission.

This being so, by a settled rule of international law, applicable to the interpretation of treaties as against the nation presenting the draft of the subject of this reference, the construction, in case of dispute, must be taken most strongly against that nation.

Hugo Grotius lays down the rule that "the interpretation must be made against the party which drafted the conditions: *Ut contra eum fiat interpretatio, qui conditiones elocutus est.*"

And Vattel says:

Here is a rule which cuts short all chicanery: If he who could and should express himself plainly and fully has not done so,

so much the worse for him; he can not be permitted subsequently to introduce restrictions which he has not expressed. It is the maxim of Roman law, "An obscure contract harms those in whose power it was to lay down the law more clearly." The equity of this rule is self-evident; its necessity is not less obvious. There can be no assured convention, no firm and solid concession, if they can be rendered vain by subsequent limitations, which ought to have been announced in the act, if they existed in the intention of the contracting parties. (Papers relating to the Treaty of Washington, vol. 5, p. 13. Berlin Arbitration.)

By a parity of reasoning such nation can not enlarge the scope of the draft.

This Commission is as clearly limited by the schedule of British claims before the Paris Tribunal, and these specifically and with exact precision described, from page to page inclusive, in the "Finding" referred to in Article I and the preamble of this Convention, as if that schedule were set out in the body of the Convention.

Article I refers to a schedule which purports to be a summary, but it also refers in terms to the findings of fact for the full and detailed statement of what is referred to the Commission, and the findings of fact are, we repeat, expressly made a part of the Convention by referring back to the preamble, where those findings are identified with as much effect as if embodied.

The authorities unite in declaring that the ordinary rule of interpretation of contracts and statutes applies to the interpretation of treaties. The rule has added emphasis when the international compact is entered into among nations whose organic law requires the ratification of the compact by more than one branch of the Government.

This aspect of that question was exhaustively discussed by arbitrators and by counsel in the Paris Tribunal. It arose out of the proposed finding of

facts, and that under Article 1892, conferring questions of fact on the nation against essentially inviolable.

One question was whether reference of the United States. Another question fact might be of citizenship.

These findings the proper and tribunal had no or an escape from second, because without the consent enlarge in Russell's argument pp. 46-56, including.

It is therefore or commission to the subject a treaty or contract its scope or make what is judicial-made.

The construction Great Britain.

This is a respect is unlike others.

Under the treaties of February

facts, and that discussion explains the reason why, under Article VIII of the treaty of February 29, 1892, conferring upon the arbitrators power to find questions of fact involved in the claims of the one nation against the other, they avoided finding any fact essentially involving a conclusion of liability.

One question discussed and avoided in the finding was whether the arbitrators had power under the reference of Article VIII to find that any act of the United States or of Great Britain was "wrong." Another question discussed was, whether a finding of fact might cover the question of how the question of citizenship would affect the question of liability.

These findings were all avoided, first, because, by the proper and strict construction of Article VIII, the tribunal had no power to find facts on which a liability or an escape from liability would directly follow; and second, because no representative of the United States, without the concurrence of the Senate, could by consent enlarge its scope. (See colloquy—Sir Charles Russell's argument for Great Britain, U. S., vol. 13, pp. 46-56, inclusive.)

It is therefore especially true here that arbitrators, or commissioners, always limited to the powers and to the subjects in express terms referred to them by a treaty or convention, have not the power to enlarge its scope or by interpretation and construction to make what is known in domestic jurisprudence as judicial-made law.

The construction contended for in the argument of Great Britain is a menace to the convention itself.

This is a reference of specific claims, and in this respect is unlike certain claims conventions, and is like others.

Under the claims convention between the two countries of February 8, 1853 (Treaties and Conventions

between the United States and other powers, Ed. '89, pp. 445-6), there was referred to the Commission in terms:

ARTICLE I. * * * All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, and all claims on the part of corporations, companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, *which may have been presented to either Government for its interposition with the other since the signature of the treaty of peace and friendship concluded between the United States of America and Great Britain, at Ghent, on the 24th of December, 1818, and which yet remained unsettled, as well as any other such claims which may be presented within the time specified in Article III, etc.*

It has been frequently held, under such a conferment of power, that the commissioners may judge of their own jurisdiction on the question of citizenship; but it is equally clear, and was held under that commission, that, as to all claims which had not been presented to either Government since the treaty of 1814, or which were not presented within the time specified in Article III, the Commission had no jurisdiction.

By the treaty of Washington, Article XII, a commission was created to which was referred:

All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between April 13, 1861, and April 9, 1865, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this treaty (Alabama Claims), and all claims, with the like exception, on the part of corporations, etc., subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for the interposition of the other, and which yet remain unsettled, etc. (Id., p. 484.)

It proceeds
"for any othe
within a certai

On the gene
as to who wer
but on the spe
in that they m
and April 9,
claims growing
to in Article I,
diction whatev

Like conver
zanship were c
France Januar
11-12, 1871;
Great Britain
(1875), for the
ing the amount
of the United
peror of Russia

Articles II a
method of asce
tain property,
provided that
the Commissio
erty for which
indemnification
thereby limitin
by a specific li

The history
is especially in
its broad cont
on the contro
Government r
guished from
jects. (Id., p

It proceeds like the Convention of 1853, providing "for any other such claims as may be presented" within a certain time.

On the general reference, the jurisdiction to decide as to who were subjects or citizens was undoubted, but on the specific limitation as to the class of claims, in that they must have arisen between April 13, 1861, and April 9, 1865, and in that they must not be claims growing out of the acts of the vessels referred to in Article I, it is clear that there could be no jurisdiction whatever in the commission.

Like conventions with similar provisions as to citizenship were entered into by the United States with France January 15, 1880; with Spain February 11-12, 1871; with Mexico July 4, 1868; and with Great Britain July 12, 1822 (*Id.*, pp. 356, 418, 700, 1025), for the purpose of ascertaining and determining the amount of indemnification due to the citizens of the United States under the decision of the Emperor of Russia (referred to in the opposing argument).

Articles II and III of that treaty provided for a method of ascertainment of the average value of certain property, and having ascertained that, *it was provided* that the Secretary of State should furnish the Commissioners *a list of this and other private property for which the citizens of the United States claimed indemnification under the award of the Russian Emperor*, thereby limiting the jurisdiction of the Commissioners by a specific list. (*Id.*, p. 420.)

The history of the Alabama treaty and arbitration is especially instructive in this connection, because of its broad conferment of jurisdiction and its bearing on the contention of Great Britain here that that Government may present a national claim as distinguished from those presented on account of its subjects. (*Id.*, p. 478.)

Articles I, III, and X embrace the conferment of jurisdiction upon the arbitrators, and so much of these articles as is necessary to cover the point we submit. (Id., pp. 479, 481-2.)

ARTICLE I. Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels, which have given rise to the claims generically known as the "*Alabama Claims*."

And whereas her Britannic Majesty has authorized her High Commissioners and plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the high contracting parties agree that all the said claims growing out of acts committed by the aforesaid vessels, and generically known as the "*Alabama Claims*," shall be referred to a tribunal of arbitration to be composed of five arbitrators, to be appointed in the following manner, that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one, and His Majesty the Emperor of Brazil shall be requested to name one.

ARTICLE VIII. * * * The said tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfill any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it. * * *

ARTICLE X. In case the tribunal finds that Great Britain has failed to fulfill any duty or duties as aforesaid, and does not award a sum in gross, the high contracting parties agree that a board of assessors shall be appointed to ascertain and determine what claims are valid, and what amount or

amounts shall be on account of each vessel, according to the arbitration by the arbitrators.

The members that they will in to the best of th equity, all matt proceed, under scribe, to the i presented to the and shall exami manner as they r

The decision o in writing, and

Now, in ord ment what wa known as the described as h to the authorit of the Joint treaty, stating Arbitrators.

(This will b The confer enough to co before the he opened, and a sented, Great Government t ground that t before it; and the arbitration national claim col, Great Br jurisdiction in and its Anne the Treaty of

The British co in the proceeding

amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, *as to each vessel*, according to the extent of such liability as decided by the arbitrators. * * *

The members thereof shall subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they shall prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper. * * *

The decision of the assessors shall be given upon each claim in writing, and shall be signed by them respectively.

Now, in order to determine by juridical ascertainment what was covered by the phrase "generically known as the Alabama Claims," (thus not specifically described as here) reference was had by the tribunal to the authoritative and certified record of the action of the Joint High Commission which framed the treaty, stating the questions to be submitted to the Arbitrators.

(This will be found in Appendix No. 1 hereto.)

Page 160.

The conferment of jurisdiction was certainly broad enough to cover national claims in the case, but before the hearings of the Geneva Arbitration were opened, and as soon as the American case was presented, Great Britain intimated the purpose of that Government to withdraw from the arbitration, on the ground that the national claims were not properly before it; and then by the assent of the United States the arbitration was saved by an order eliminating the national claims of the United States from the protocol, Great Britain holding that the tribunal had no jurisdiction in the premises. (See Protocols I, III and its Annex, V, VI, and VII, Papers Relating to the Treaty of Washington, Vol. 4.)*

* The British counsel insisted, too, that the only ships which appeared in the proceedings of the High Joint Commission were the *Florida*,

In the light of the foregoing authorities and this history, we reproduce here the question propounded in the opposing brief as follows:

The first questions, therefore, are, What are the claims, and in whose behalf is Great Britain entitled to claim compensation? (Fol. 10, p. 14.)

The answer there set down is attempted to be given from the *diplomatic correspondence* between the Governments, including *notes verbales*, extending from October 21, 1886, down to 1890, and from the domestic correspondence between the claimants and the Government of the Dominion of Canada—the United States having no diplomatic relations with that Government—and which, by the way, was never brought to the attention of the United States.

After considering these means for interpreting a convention which confessedly contains no ambiguity, this conclusion is reached on those premises in the British argument (p. 18):

It is therefore submitted that the claims referred to are all the claims which had been presented and urged by Great Britain prior to the date of the convention; and further, that Great Britain is entitled to compensation from the United States *on her own behalf*, and on behalf of every person who was interested in any of the vessels in question, their cargoes and voyage, either as owner, master, mate, member of the crew, or otherwise.

The answer of the United States to the question quoted *supra* is this:

The "claims" are such as are specifically described

Alabama, Georgia, and Shenandoah, and that these became "generically" known as the "Alabama claims." (See British argument, Papers relating to the Treaty of Washington, Vol. 3, p. 260, par. 3.) And later, on that ground the counsel for Great Britain declared to the Arbitrators "in the most explicit manner" (thus suggesting a purpose not to be bound, or to "withdraw," as in the case of the national claims) that claims in respect of vessels not specified in the case of the United States among those for whose acts the United States asked the Tribunal to hold Great Britain, are not, in the view of Her Majesty's Government open to argument or discussion "since they can not properly be taken into consideration by the Arbitrators for any purpose whatever." (Id., p. 281.)

as referred to
tion of Febru
behalf Great
tion" are those
as the person
unless and ex

(a) The Un
son in any ca
zen of the Un
in the conven

It is not do
deceased claim
claim, but in s
as to rights a
would have st

For the as
(Commission
of February

(1) The co
not disclose
mission, or ho
unintelligible
reference to th
in it.

(2) The tre
29, 1892, nam
the claims ref
"arising" und
is limited to
that arose ou
United States
Bering Sea wi
matter of tha

In connectio
missioners will be
and the Schedu
vention of 1896, p
for accurate comp

as referred to the Commission in and by the convention of February 8, 1896, and the "persons in whose behalf Great Britain is entitled to claim compensation" are those specifically named in that convention as the persons who presented the claims at Paris, unless and except—

(a) The United States establish that another person in any case is the "actual" owner who is a citizen of the United States—an exception provided for in the convention itself.

It is not doubted at all that a representative of a deceased claimant or his assignee could present the claim, but in such case he would stand in all respects as to rights and disabilities as the original claimant would have stood under the convention.

For the ascertainment of the jurisdiction of the Commission over the subject-matter the Convention of February 8, 1896, consists of three documents:*

(1) The convention standing detached, which does not disclose what claims are referred to the Commission, or how they "arise," or what they are, and is unintelligible on the question of jurisdiction without reference to the other two documents which are named in it.

(2) The treaty signed at Washington on February 29, 1892, named in it; and from this it appears that the claims referred to the Commission must be claims "arising" under that treaty; that is, the Commission is limited to the consideration of claims for injuries that arose out of the assertion of the claim of the United States to jurisdictional rights in the waters of Bering Sea with reference to seals, which is the subject-matter of that treaty.

* In connection with the argument on construction to follow, the Commissioners will be furnished the Treaty of 1892, the Findings of Fact, and the Schedule—pp. 1 to 60, inclusive—therein referred to, and the Convention of 1896, printed together in convenient form, to be referred to for accurate comparison with the progress of the argument.

Clearly, here is a limitation which prevents this Commission taking cognizance of any claim for injuries committed by the United States generally, as, for instance, on a merchant ship or a whaler on the high seas, which would have been cognizable under the conventions of 1853 and 1871.

(3) The Award and the Findings of the Tribunal of Arbitration are found specifically referred to in this convention by date, and especially find there specified certain Findings of Fact; and so the "claims" must "arise" as well by the Award and the Findings of Fact as by the Treaty; and in this award and findings of fact so referred to as defining what this Commission shall take cognizance of (a limitation in addition to that which we have seen attached by the reference to the Treaty of 1892), we find our way to the carefully prepared schedule of claims, prepared by Great Britain and sworn to by the claimants, of which this Commission is given jurisdiction in this inquiry.

The subject-matter of that finding—to which appropriate relative words and repetitions refer throughout the finding, article by article—is stated in No. 1 of the Findings of Facts, and is this:

These several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively, mentioned in the SCHEDULE to the British case, pp. 1 to 60, inclusive, etc.

Thus, throughout *every paragraph* of the findings in each one continuing, as in Finding 1. Thus in—

1. (a) Questions as to the value of "the SAID vessel" or their contents, or either of them, and the question as to whether the vessels mentioned in the SCHEDULE to the British case, or any of them, were wholly or in part the actual property of citizens," etc.

(b) It being understood that it is "open to the United States to raise these questions or any of them

if they t
liability.
AMOUNTS
CASE."

2. Th
tion of th
etc.

3. (a)
of vesse
United S

(b) "
SAID SEV
in each c

(c) "
for alleg

United
imprison
pages 1

1 NO
5 T

which
in case
tion 1 2
AIN (PP.

and pow
jurisdict
It foll
claims,"

upon the
(1) T

by
the amo
in expre

(2) T
States o
injuries,
60, incl

if they think fit in any future negotiations as to the liability of the United States Government to pay THE AMOUNTS MENTIONED IN THE SCHEDULE TO THE BRITISH CASE."

2. That the "SEIZURES AFORESAID," with the exception of the *Pathfinder* seized at Neah Bay, were made, etc.

3. (a) "That the SAID several searches and seizures of vessels were made by public armed vessels of the United States," etc.

(b) "That the alleged acts or offenses for which SAID SEVERAL searches and seizures were made were in each case done or committed," etc.

(c) "That the SAID fines and imprisonments were for alleged breaches of the municipal laws of the United States," etc. (No reference to "fines and imprisonments" appears anywhere except between pages 1 to 60, inclusive, of the British case.)

4. No reference to the subject-matter.

5. "That the district courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in THE SCHEDULE TO THE CASE OF GREAT BRITAIN (PP. 1 TO 60, INCLUSIVE) had all the jurisdictions and powers of courts of admiralty, including the prize jurisdiction," etc.

It follows that, as to everything except "Additional claims," the convention of 1896 confers jurisdiction upon the Commissioners for three purposes only:

(1) To determine the amount of each claim appearing by the British schedule (pp. 1 to 60, inclusive), the amount being the question on which the finding in express terms declined to pass.

(2) To determine as to the liability of the United States on account of "each" claim of each person for injuries, as set down in the British schedule (pp. 1 to 60, inclusive).

(3) To determine the question of liability of the United States which might be raised on account of "whether the vessels mentioned in the schedule" (pp. 1 to 60, inclusive), or any of them, were wholly or in part the actual property of citizens of the United States.

Finding I, last paragraph, clearly points out that the question for the future negotiations of the Governments is only as to the liability of the United States "TO PAY THE AMOUNTS MENTIONED IN THE SCHEDULE TO THE BRITISH CASE." Article 3 of the Convention provides that the Commissioners shall "hear" only questions of fact "*not found by the Tribunal of Arbitration*," and, of course, to ascertain what was found, and what is therefore excluded from the cognizance of the Commissioners, can only be ascertained by the findings themselves, here again, referred to as a part of the Convention, as has been seen.

The claims, then, referred by the Convention, are no part of them, CLAIMS OF VESSELS, but are "claims" on account of "PERSONS," "ARISING" by the treaty, the award, AND the findings of fact. The word "arise," in pointing the way to the description of the particular claims to be referred, as used in Article I of the Convention, is clearly used in the sense of "having their originals," "presenting themselves," "appearing from."*

The only other sense in which the term can be used in connection with the context would be that of "cause" or "creation," which would give to the sentence the meaning that the claims for injuries were caused or created by the treaty, the award, and findings, which of course would be absurd.

These claims are of persons, as ascertained by the findings, by the schedule (pp. 1 to 60, inclusive), and by the convention of 1896.

* Latham's Johnson's Dictionary, "Arise," 3; Crabb's Synonyms, 291; Webster, "Arise," 2.

Article I of "claims on ac
Article III determine, et
"assess the co
thereof."

Article VII awarded to C
account of any

Turning no presented bef
finding, and claimants, the
the claim of 60, inclusive)

The details go to make u
is used for il
amounts are
pass on amou
in consequenc
of Article III

Claimant and

(1) William M

(2) James Do

Article I of the Convention names the claims as "claims on account of injuries sustained by *persons*."

Article III provides that the Commissioner shall determine, etc., in respect of "each claim," and "assess the compensation if any to be paid on account thereof."

Article VIII uses this language: "The amount awarded to Great Britain under this Convention *on account of any claimant* shall be paid," etc.

Turning now to the schedule of claims of persons presented before the Paris Tribunal, found by the finding, and of the persons who presented them as claimants, the following is the list and the nature of the claim of each, as set out in "schedule (pp. 1 to 60, inclusive) of the British case."

The details are omitted of the several items that go to make up the claims, except in one case, which is used for illustration of every other claim. The amounts are omitted because the findings did not pass on amounts, and their assessment was referred, in consequence, to the Commissioners by clause second of Article III of the Convention.

Claimant and sworn owner.	Schooner.	
(1) William Munsie	Carolena	Items of claim without amounts, as follows: "Value of vessel, value of outfit, insurance, wages of crew, passage of crew, passage of mate, personal expenses, legal expenses, estimated seal catch for 1886, total claimed by owner with interest at 7 per cent to date of payment."
(2) James Douglas Warren.	Thornton	Similar details.

Claimant and sworn owner.	Schooner.	
(3) Charles Spring	Onward	Similar details.
(4) Charles Spring	Favourite	Do.
(5) Thomas H. Cooper	W. P. Sayward ..	Do.
(6) Thomas H. Cooper	Grace	Do.
(7) Thomas H. Cooper	Anna Beck	Do.
(8) Thomas H. Cooper	Dolphin	Do.
(9) Gutman & Frank, Gutman as the owner, Frank as equally interested in the results of the sealing voyage.	Alfred Adams ..	Do.
(10) James J. Gray	Ada	Do.
(11) George Byrnes	Triumph	Do.
(12) Charles E. Clark	Juanita	Do.
Richard Hall,		
William J. Goupel,		
Hans Halgeson, partners as Hall, Goupel & Co.		
(13) William Munsie	Pathfinder	Do.
Frederick Carnie		
(14) Edgar Crowe Baker ..	Triumph No. 2 ..	Do.
Daniel McLean		
Rosine Gibson		
John C. Blackett		
(15) Morris Moss	Black Diamond ..	Do.
(16) Morris Moss	Lily	Do.
(17) John M. Taylor	Ariel	Do.
Samuel W. Bucknam ..		
Bela R. Lawrence		
(18) Charles Spring	Kate	Do.
(19) Victor Jacobson	Minnie	Do.
(20) William Munsie	Pathfinder (second claim).	Do.

The claims of

Claimants.

David Monroe ..

Margotich

Hans Guttorms ..

Harry Norman ..

James Ogilvie ..

James Black ..

Warren

John Reilly

George P. Ferey ..

A. B. Laing

Louis Olsen

Michael Keefe ..

W. Petit

C. A. Lundberg ..

No claims ..

In schedule ..

"owner" of the ..

triumph, and of ..

those cases of ..

crew and human ..

mated future ..

those claims, ..

claim of the owner ..

Not only ..

claimants, but ..

mentioned, de ..

claims referred ..

referred to owner ..

award, the final ..

there is no judgment ..

sent for the ..

subject, in the ..

The claims of persons other than owners are scheduled as follows:

Claimants.		Nature of claim.
David Monroe	Master of Onward . .	Illegal arrest and imprisonment.
Margotich	Mate of Onward	Do.
Hans Guttormsen . .	Master of Thornton . .	Do.
Harry Norman	Mate of Thornton . . .	Do.
James Ogilvie	Master of Carolena . .	Do.
James Black	Mate of Carolena . . .	Do.
Warren	Master of Dolphin . .	Sufferings and losses; navigating four vessels from Unalaska to Sitka.
John Reilly	Mate of Dolphin	Sufferings and losses.
George P. Ferey . . .	Master of Sayward . .	Do.
A. B. Laing	Mate of Sayward	Do.
Louis Olsen	Master Anna Beck . . .	Do.
Michael Keefe	Mate Anna Beck	Do.
W. Petit	Master of Grace	Do.
C. A. Lundberg . . .	Mate of Ada	Do.

No claims are made in behalf of any other person. In schedule 1 to 60 in the cases of Morris Moss, "owner" of the *Lily*; of Byrnes, owner of the *Triumph*, and of Bucknam, as owner of the *Ariel*, and in those cases only, claims are set up in general for the crew and hunters, but only for their share in the estimated future catch, which, in the details of each of those claims, made by the owner, *is included in the claim of the owner, and so stated.*

Not only are there no other persons named as claimants, but there are no other claims of persons mentioned, described, or suggested in the schedule of claims referred to this Commission, or in any paper referred to or connected with either the treaty, the award, the findings of fact, or the Convention. Hence, there is no jurisdiction of such claims, which are presented for the first time, in the whole history of the subject, in the British argument.

A "lump sum" for persons in general not named or suggested in the schedule—for crews and others whose names are not mentioned anywhere—will not do under this convention, and the new position of Great Britain advanced at page 56 of the argument can not be maintained.

This brings us to the following proposition:

There are two classes of "persons" among these claimants, who, by the settled and adjudicated principles of international law, are not "persons in whose behalf Great Britain is entitled to claim compensation from the United States."

These are:

(1) Original subjects of Great Britain still owing that nation a qualified allegiance (in respect of sovereignty and certain extritorial laws), but who by domicile in the United States, without naturalization, owe allegiance to the sovereign claims of the United States and obedience to their municipal laws.

(2) Citizens of the United States, alleged to have been domiciled in Great Britain, who had not become naturalized in Great Britain, but who owed allegiance to the United States, obedience to the jurisdiction asserted by the authorities of its sovereignty—executive, legislative, and judicial—and obedience to their extritorial laws.

And of these in their order.

(ONE.)

CLAIMANTS WHO WERE ORIGINAL BRITISH SUBJECTS,
BUT DOMICILED IN THE UNITED STATES.

In respect of some of the schooners, there are two owners in this class, as to one of whom there may be

doubt, but in respect of *Thomas H.* while in the United States.

The British especially from there import the omission of the Convention of the Convention of Great Britain in relation, was a measure of limitation of limitation was eliminated the similar use of ship of a claim productive of claimants.

Running the Commissions of claims were considered who were technically naturalized in British legal doctrine.

The same doctrine Mixed Commission to. In such cases such a description from the country would be admitted a country at naturalized, considered his domicile, but other country the country of

Under the British subject the convention Bates, in the

doubt, but in respect of all claims presented in behalf of *Thomas H. Cooper*, as owner, the fact of his domicile in the United States is conclusive against them.

The British argument assumes (p. 38-39), and especially from the letter of Secretary Gresham, which is there imported into this case for the first time, that the omission of the words "British subjects," in Article I of the Convention, as defining those for whom Great Britain might present claims under the Convention, was a means of enlargement of jurisdiction rather than of limitation. As a matter of fact, that description was eliminated, for the reason that its use, and the similar use of terms importing the original citizenship of a claimant, had in all prior Conventions been productive of much embarrassment to the Commissioners.

Running through the proceedings of the Mixed Commissions of 1853 and 1871 it will be seen that claims were constantly presented in behalf of persons who were technically British subjects, because never naturalized in this country, and yet who had established legal domiciles in the United States.

The same difficulty had arisen under all the other Mixed Commissions which have been before referred to. In such cases it was insisted on the one side that such a description of persons could not be eliminated from the convention, although at the same time it would be admitted that a person legally domiciled in a country at the time his claim arose, though not naturalized, could not recover against the country of his domicile, before such commissions, or against any other country, by virtue of his original citizenship of the country of his original allegiance.

Under the Mixed Commission of 1853 the term "British subject" was in such case eliminated from the convention, by construction, by the British umpire, Bates, in the *Laurant's* case; the umpire holding that

the term "British subject," although correctly describing the political status of the claimant, was not intended by the convention of 1853 to mean that a British subject domiciled, though not naturalized, in Mexico, and who had thus become civilly subject to the laws and the sovereignty of that country in its foreign relations with countries other than Great Britain, could urge his political status, of original allegiance to Great Britain, as a claimant against the United States for injuries suffered at their hands in Mexico.

Under the Mixed Commission established by the treaty of Washington of 1871, and which finished its labors in 1874, the question came up on demurrer of the United States in the Barclay case, and it was there held on the broad conferment on the Commissioners of jurisdiction by the treaty of Washington (it appearing by his statement of claim that he was a resident of the United States, and therefore domiciled there) that the demurrer must be overruled on the ground that Barclay was a "British subject" within the language of the Convention; but in that case it clearly appeared, as strongly urged by the British counsel, in point III of his brief, that the claimant Barclay had, while domiciled in the United States, been as "faithful to the United States as any loyal citizen," the principle being that he had been loyal to the sovereignty of his domicile and obeyed its municipal laws.*

In consideration of these difficulties under prior commissions, therefore, the framers of the present Convention provided, in effect, that the claims to be presented would only be those that Great Britain would be entitled to present under the rules of inter-

* See report by Her Majesty's agent, of the Mixed Commission, presented to both Houses of Parliament, 1874, and published in Parliamentary Papers under the title "North America, No. 2" (1874), page 297.

national law, defining claimants. There is no Cooper having and up to the c Victoria, legally fact of residence for more than to by Warren a 1267, 1836-37

The United thing farther residence, and it. It was fou a married man and made his thirty-five year been to Victor few days at a

It is univers conclusive pro Dicey states Dicey on "Co J. B. Moore, 1

(1) A person's dence of domicil

(2) When a p given country, l change, to retai

(3) Residence intention to resi in so far evidenc

See cases, a this subject: stituting domic

322: see Dice "Residence (Sir Sherston

national law, and the term "British subjects," as defining claimants, was omitted by express intention.

There is no question whatever as to Thomas H. Cooper having been during all the period in question, and up to the close of the sitting of this commission at Victoria, legally domiciled in the United States. The fact of residence in New York and San Francisco for more than forty years continuously was testified to by Warren and by Cooper. (See Record, pp. 940, 1267, 1836-37, 941, 951.)

The United States did not choose to call out anything farther regarding the undoubted fact of that residence, and Great Britain did not seek to explain it. It was found by the testimony that Cooper was a married man and had resided in the United States and made his home at San Francisco for more than thirty-five years continuously, and that he had never been to Victoria but three times, and then only for a few days at a time on visits.

It is universally held that residence unexplained is conclusive proof of domicile.

Dicey states the rules of evidence as follows (see Dicey on "Conflict of Laws," American notes by J. B. Moore, 1896, p. 132):

(1) A person's presence in a country is presumptive evidence of domicile.

(2) When a person is known to have had a domicile in a given country, he is presumed, in absence of proof of a change, to retain such domicile.

(3) Residence in a country is *prima facie* evidence of the intention to reside there permanently (*animus manendi*), and in so far evidence of domicile.

See cases, and see Sir W. Scott, so often quoted on this subject: "Time is the grand ingredient in constituting domicile." (The Harmony, 1800, 2 C. Rob., 322; see Dicey, p. 137, note.)

"Residence is *prima facie* evidence of domicile." (Sir Sherston Baker's Halleck, Vol. I, p. 421.)

Phillimore on Domicile, page 146, says:

Every man is viewed by the law of nations as a member of the society in which he is found. Residence is *prima facie* evidence of national character, susceptible, however, at all times, of explanation. If it be for a special purpose and transient in its nature, it shall not destroy the original or prior national character, but if it be taken up *animo manendi*, then it becomes a domicile, superadding to the original or prior character the rights and privileges, as well as the disabilities and penalties of a citizen, a subject of the country in which the residence is established.

(Cited in arguments with Dr. Phillimore Uhdes case, in report of decisions, Commission to the Settlement of Claims between Great Britain and the United States, U. S., 1856, p. 445.)

To the same effect see "*The Indian Chief*," Robt. Adm. Reports, 3-12, and collection of authorities, and their analysis in Dana's Wheaton, sec. 322 *et seq.*, showing the British and American authorities in harmony.

In I Binney's Report (p. 349), domicile is defined as "residence at a particular place accompanied with positive or presumptive proof of continuing there for an unlimited time."

The logical positions of Great Britain as to Cooper are these:

(a) That his ownership of the vessels seized must be taken as conclusive. (In this we fully agree, but on other and distinct grounds from those taken by Great Britain.)

(b) That although domiciled in the United States since boyhood, and for nearly half a century, because he was not naturalized, and because he was an original British subject, he could, under the municipal laws of Great Britain, take out a British registry for his ships, and put them under the British flag.

(c) That so domiciled, by virtue of such registry and flag alone, in direct violation of the municipal laws

of the United States, in violation of the territorial force, and claim and assault on the waters of Berlin, and that he could send his

(d) That Cooper's neighborly born citizens of the United States, than himself been sent by the United States, may be seized while at the same time and fellow-citizens go and come

(e) That if the United States enforced the laws of property of a citizen by the United States, or naturalized, original political rights in a British vessel in a British is a person or that he has sufficient domicile, from the United States

We affirm that he is tolerated for a

In such circumstances that is what he is a "national" fit to defy the laws that protect his allegiance and the form of national Much less

of the United States of exterritorial force, and in direct violation of their criminal statutes, also of exterritorial force, and in direct defiance of the national claim and assertion of jurisdiction over the sealing waters of Bering Sea (a sovereign claim made authoritatively by all the branches of the Government) he could send his vessels to take seals in those waters.

(d) That concurrently with his, the vessels of Cooper's neighbors in San Francisco, who were native-born citizens of the United States, protected no more than himself by the laws of the United States, having been sent by them to take seals in the same waters, may be seized and condemned, under those laws, while at the same time their owners, his neighbors and fellow-citizens of thirty-five years, witness his fleets go and come, and take seals with impunity.

(e) That if in these circumstances the United States enforced the law alike and with equal hand upon the property of all their citizens of San Francisco, be he a citizen by domicile or like his neighbors by nativity or naturalization, that Cooper, by reason of his original political allegiance and by having put his vessels in a British registry and under a British flag, is a person on account of whom, for these penalties that he has suffered, and while still retaining his American domicile, Great Britain can claim compensation from the United States.

We affirm that no such monstrous doctrine can be tolerated for a moment.

In such circumstances the citizen by domicile (for that is what he is) can not lay aside his character as a "national" of the United States whenever he sees fit to defy the same sovereignty and the same laws that protect him, by asserting his original political allegiance and the fact that he has not gone through the form of naturalization.

Much less can he call upon the country of his

original allegiance to make reclamation for him against the nation of his actual allegiance for what he has suffered for violation of the latter's laws.

We quote from the language of Secretary Fish, in his letter to Mr. Bachiller of April 8, 1874 (2 Wharton's Dig., sec. 215), the principle involved:

It would be a monstrous doctrine, which this Government would not tolerate for a moment, that a citizen of the United States who might deem himself injured by the authorities of the United States could, by transferring his allegiance to another power, confer upon that power the right to inquire into the legality of the proceedings by which he may have been injured while a citizen.

Protection can not be invoked by domiciled foreigners, except for discrimination and arbitrary acts "as distinguished from penalties and punishments incurred by the infraction of the laws of the country within whose jurisdiction the sufferers have placed themselves." (2 Wharton's Dig., sec. 189, p. 434, and authorities.)

And I Kent, p. 76: "Domicile is the test of national character."

Lord Stowell (1 Dod. Adm., p. 224, *The Ann*):

A person domiciled in another country is to be taken as a subject of such country. * * * *He can not take advantage of both characters at the same time.*

Bluntschli (Int. Law codified, sec. 394):

Certain persons may, in rare instances, be under the jurisdiction of two different States or even a greater number of States.

In case of conflict the preference will be given to the State in which the individual or family in question have their domicile; their rights in the States where they do not reside will be considered as suspended.

Said Mr. Webster, in his report to the President of the United States in Thrasher's case (6 Web. Works, pp. 522-523):

The general rule of the public law is that every person of full age has a right to change his domicile, and it follows that when he removes to another place with the intention to

make that place his domicile, he is no longer a citizen of the United States. * * *

If persons are not naturalized according to the laws of the United States, they are not entitled to the rights of citizens.

What would be the result if the Government were to interpose to protect the rights of citizens which might be violated by the Government?

In questions of this kind, the principle is that the Government is bound by the reasonable rules and regulations of the Government.

Mr. Marcy, Secretary of State, in the Koszta case, 1852, p. 485:

Such domicile, by which a person acquires allegiance to the United States, incurs the obligation to the civil laws of the United States.

It is to be noted that this was asserted by the United States in the case of a domiciled person, and that the United States is not bound by the laws of the United States, p. 505.)

See also Mr. Marcy's report to the President, 1852, p. 1.

Wharton, in his Digest, 269-281, quotes the same principle.

But I must again repeat that a person domiciled in a State of the United States, and may

* This distinction is made in connection with the rights of the United States. Here the United States is bound by the laws of the United States to protect the rights of the laws of the United States.

make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile. * * * It is well known that hundreds of thousands of persons are now living in this country who have not been naturalized according to the provisions of law, nor sworn any allegiance to this Government.

What would be the condition of this country and its Government if the sovereigns of Europe, from whose dominions they have emigrated, were supposed to have still a right to interpose to protect such inhabitants against the penalties which might be justly incurred by them in consequence of their violation of the laws of the United States?

In questions on this subject the chief point to be considered is the *animus manendi*, and this must be decided by reasonable rules and the general principles of evidence.

Mr. Marcy, Secretary of State, September 26, 1853, in *Kosztka* case, as quoted in 2 Whart. Dig., sec. 198, p. 485:

Such domiciled citizen * * * is under the bonds of allegiance to the country of his residence, and if he breaks them, incurs the same penalties; he owes the same obedience to the civil laws and must discharge the duties they impose on him.

It is to be noted that in the *Kosztka* case the right was asserted by the United States to protect a domiciled person, although unnaturalized, *against every nation except the nation of his original citizenship*.* (See *id.*, p. 505.)

See also Marshall, C. J., in *Murray v. Charming Betsey* (2 Cranch, p. 120); *Carlisle v. United States* (16 Wall., p. 147).

Wharton, in his *Criminal Law* (8th edition, sec. 269-281), quotes Phillimore to the point that a man can have only one allegiance, and proceeds:

But I must agree with Heffter in holding that a mere resident in a State owes for the time being allegiance to such State, and may be guilty of treason to such State if as a

This distinction is new in point here, but attention is called to it in connection with the question of original allegiance, considered later.

Here the United States is not asserting the right to protect Cooper for violation of the laws of Great Britain, but is denying the right of Great Britain to protect Cooper in his defiance of the sovereignty and violation of the laws of the United States.

private person he wages war against it or renders comfort to its enemies.

Cobbett, for instance, when in the United States was never naturalized, nor did he ever restrain himself from declaring that he was and continued to be a British subject, yet no one would have pretended that Cobbett, while residing in the United States, was not liable to be indicted for all offenses, political or otherwise, made indictable in the place of his residence, and the same position has been, as we have seen, taken by the British Government in respect to citizens of the United States who when residing in Ireland have been engaged in conspiracies against the British Government.

And he closes with this quotation from Phillimore:

All strangers commorant in a land owe obedience, as subjects for the time being, to the laws of it.

"It is not necessary to citizenship that the domiciled inhabitant should have the right to vote or hold political office;" and under all the authorities, without exception, a person so domiciliated owes civil and political allegiance to the local sovereignty. (See Judge Hoar in Commission, 1871, Report of British Agent, p. 280, Appendix 6; "Venice," 2 Wall., 274; "Peterhoff," 5 Wall., 60; "Mrs. Alexander's Cotton," 2 Wall., 417; "Venus," 8 Cr., 253; Story's Conf. of Laws, sec. 68; Morley's Int. Law, secs. 68, 168; Trist's Int. Law, II, 233, 298-9; I, 82, 83; Halleck's Int. Law, 717, sec. 2g; 702, sec. 7; 705, secs. 12, 13, 14; 2 Kent's Com., sec. 25.)

And in return he is entitled to the equal protection of the laws of that sovereignty with other citizens, with the very limited qualification that the local sovereignty can not intervene to protect him from the consequences of his infraction of the sovereignty or of the exterritorial laws of the nation of his original allegiance.

The local sovereignty can protect him and protect his property and make reclamation for him against every other nation, except the one of his original allegiance, in any case; and in case of war, even if the country of his original allegiance is belligerent, the

country of his intervene to p country of his that case, if he country of his o

What right the nation of of domicile in domiciliated b

There is no law on this su country of his allegiance is la as follows:

They (the nat exact reparation administrative a of obtaining legi try exist, or if s vain; and they h subjects and othe state and the jus that compensati tion or prejudic acts of injustice

Broadly, all p to the laws of the

But even H

When the sub or temporarily r domiciled there, what affected.

Hall says fu of domicile is nable to all its

Great Britain b of a British father, of England, and ta England, was guil Trials. XVIII.)

B S—f

country of his local allegiance being neutral, may intervene to protect him as a neutral as against the country of his original allegiance; *but never, even in that case, if he has been guilty of an act hostile to the country of his original allegiance.**

What right of protection or reclamation remains to the nation of original allegiance against the nation of domicile in respect of the subject of the former so domiciliated but not naturalized in the latter?

There is no conflict of authority in international law on this subject, and the strictest rule against the country of domicile in favor of the nation of original allegiance is laid down by Hall (sec. 87, pp. 291-292), as follows:

They (the nations of original allegiance) have the right to exact reparation for maltreatment of their subjects by the administrative agents of a foreign government if no means of obtaining legal redress through the tribunals of the country exist, or if such means as exist have been exhausted in vain; *and they have the right to require that, as between their subjects and other private individuals, the protection of the state and the justice of the courts shall be afforded equally, and that compensation shall be made if the courts from corruption or prejudice or other like causes are guilty of serious acts of injustice.*

*Broadly, all persons entering a foreign country must submit to the laws of that country. * * **

But even Hall qualifies this rule as follows, 295:

When the subject of a state is not merely passing through or temporarily resident in a foreign country, but has become domiciled there, the right of his state to protect him is somewhat affected.

Hall says further that the jurisdiction of the state of domicile is complete over foreigners who are amenable to all its laws (pp. 216-221).

* Great Britain held that a person who was a British subject, the son of a British father, born in France, but still a British subject by the laws of England, and taking a commission in the French army in a war with England, was guilty of high treason, and he was convicted. (State Trials, XVIII.)

Lord Westbury says (in *Udny v. Udny*, L. R. 1 H. L. Sc. 441):

The law of England and of all civilized countries ascribes to each individual at his birth two distinct legal states or conditions, one by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status. The political status may depend on different laws in different countries, whereas the civil status is governed universally by one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status.

But this subject will be considered more directly when we come to the status of American citizens alleged to have been domiciled in Great Britain (*infra*, pp. 53-66).

The cases cited in the British argument on the subject of domicile (p. 53), serve to illustrate the principle, thus:

In 2 Knapp, P. C. 295, it was decided: (1) That Drummond was a British subject; (2) that he was domiciled in France; (3) that under a treaty providing for compensation by the French Government for losses to British subjects, Drummond could not claim compensation from France as a British subject because of his domicile in France.*

Here in this case our positions are as to Cooper precisely the same as there held as to Drummond and France, thus: (1) That he is a British subject by original allegiance, as Drummond was; (2) that at the time of the alleged injury he was domiciled in

*In the same report (2 Knapp, P. C. 51) will be found similar holdings equally strong against the claim in behalf of Cooper. In Long's case it is held that a corporation composed of British subjects existing in a foreign country by the latter's assent must be held to be a foreign corporation.

the United States for compensation. Great Britain the United States Cooper because but the added was engaged sovereignty of But the who in the shoes of Great Britain by the treaty as follows:*

The inhabitants have liberty free cargoes to all such as aforesaid, to which to enter into the parts of the said occupy houses and merce; and, generation, respectively and security for THE LAWS AND CUSTOMS TIVELY.

It can not be her subjects re in this treaty, security of the statutes, as provided Great Britain any such sub of the United those laws and statutes are in commerce of to all citizens "all persons."

*Treaties and Powers (p. 410, ed.

the United States; (3) that under a treaty providing for compensation for injuries to persons for whom Great Britain is entitled to make reclamation against the United States, reclamation can not be made for Cooper because of his domicile in the United States; but the added objection in Cooper's case is that he was engaged in violating the laws and defying the sovereignty of his domicile.

But the whole question as to any claimant standing in the shoes of Cooper is not only concluded against Great Britain by the rules of international law, but by the treaty between the nations of July 3, 1815, as follows:*

The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers, in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to *remain and RESIDE* in any parts of the said territories, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, BUT SUBJECT ALWAYS TO THE LAWS AND STATUTES OF THE TWO COUNTRIES, RESPECTIVELY.

It can not be seriously contended that in behalf of her subjects residing in the United States as provided in this treaty, and enjoying complete protection and security of their laws, but subject to their laws and statutes, as provided and stipulated in the treaty, Great Britain can make reclamation on account of any such subject for injuries suffered at the hands of the United States while in the act of violating those laws and statutes, more especially when such statutes are in the nature of regulations of trade and commerce of extraterritorial effect, directly applicable to all citizens of the United States everywhere and "all persons."

* Treaties and Conventions between the United States and other Powers (p. 410, ed. 1889).

In point under this treaty is the opinion of the Commission for the settlement of claims between the United States and Great Britain under the convention of 1853 (pp. 336-337), and also cited in Barclay's case under the Commission of 1871.

Finally, as to the Cooper class of claims, the logical position of Great Britain is:

(a) That under the rules of international law and the treaty of 1815 unnaturalized British subjects legally domiciled in the United States are entitled to the protection of the laws equally with American citizens; but—

(b) They are at the same time exempt and privileged from the effects of the operation and execution of the laws that protect them, and thus possess the privileges and protection of both nationalities and obligations of obedience to neither; not to Great Britain, because beyond her territory and jurisdiction, and not to the United States because they may claim protection against them as British subjects.

It is not true, and Fiore emphatically denounces the extension of such protection as is here claimed by Great Britain in this class of cases in his *Nouveau Droit International Public*, I, 561: "The protection is illicit and unjustifiable when its object is to confer a privileged position upon the subjects or citizens (Nationaux) residing abroad."

Cooper was, at the time he became the legal owner of these vessels, and at the time of the seizures quoted in the United States, and in their relations to him as against Great Britain, an American citizen, and as such his ships, as we shall see, were entitled to carry no flag but that of the United States, and were not even entitled to British registry.

There remains to be considered in cases like Cooper's the position taken in the British argument, which, we take the liberty to observe, should carry its own refu-

CLAIM

tation, that un-
for the adjust-
ventions on cl-
other "the flag
not only conc-
owner in the
but of domicil
presumption,
international c

But as this
presented in b
and naturalize
Britain, it will
(See pp. 66 to

THE CLAIMANTS
UNITED STATES
TIME OF THE
NATURALIZED
IZATION TREA
BRITAIN, ARE
"IN WHOSE
CLAIM COMPE

In the first
to show that
were true tha
needed status,
of domicile w
tional law.*

But conced
that these clai
there is no au
of that nation
tions here pr

tation, that under conventions of this kind, in terms for the adjustment of private claims, like all the conventions on claims ever entered into in some way or other "the flag and the register" of a ship are to carry not only conclusive evidence of the nationality of the owner in the sense, not only of political citizenship but of domicile, and are also to carry that conclusive presumption, not only on the high seas, but into this international court.

But as this argument applies as well to the claims presented in behalf of American citizens, native born and naturalized, alleged to be domiciled in Great Britain, it will be treated under a subsequent caption. (See pp. 66 to 85.)

(TWO.)

THE CLAIMANTS WHO WERE ORIGINAL CITIZENS OF THE UNITED STATES, NATIVE BORN OR NATURALIZED, AT THE TIME OF THE ALLEGED INJURIES, BUT NOT AT THAT TIME NATURALIZED IN GREAT BRITAIN UNDER THE NATURALIZATION TREATY OF 1870, EVEN IF DOMICILED IN GREAT BRITAIN, ARE NOT, UNDER THIS CONVENTION, PERSONS "IN WHOSE BEHALF GREAT BRITAIN IS ENTITLED TO CLAIM COMPENSATION FROM THE UNITED STATES."

In the first place, the burden is upon Great Britain to show that the claimants are such persons, and if it were true that legal domicile would give them the needed status, the record fails to disclose the proof of domicile within the rules of evidence in international law.*

But conceding for the purpose of this argument that these claimants had a domicile in Great Britain, there is no authority whatever to sustain the position of that nation that it can in their behalf, in the conditions here presented, make reclamation *against the*

U. S. and
Spanish
Opin.
Answer to
Umpire, No. 1.
1 Greenl.
Ev., sec. 79.

* See p. 89, et seq.

United States, which is still their country of political allegiance.

The authorities are all the other way.

Before proceeding to cite them, it is proposed to briefly analyze the authorities cited in the British argument, commencing at page 50.

(a) The citation from Vattel is the perfectly well-settled general doctrine that a foreigner passing through or domiciled in a country shall be secure from injury; but, of course, the point is not discussed as to how far such foreigner will be protected against his own country; neither is the principle referred to as to obeying the laws and respecting the sovereign claims of his own country.

The opinions cited from the domestic body of temporary commissioners appointed by the United States to distribute the award for the Alabama claims are not usually held to be authoritative in any court. Their law of decision was statutory and wholly municipal.

Many of those opinions are adverse to the British positions on many points, but we shall not cite them on our side, because they are not evidence of the rules of international law as held by any nation, not even the United States. But the quotation from Commissioner Rayner's decision is cited in the British argument, from the case of *West v. United States*, No. 91, where, after citing the general principle from Vattel (as cited in the opposing brief here), the commissioner goes on to state the application of the rule to foreigners resident in England, as there quoted: but it was not asserted in that opinion that the right of protection of the country of domicile against the country of political allegiance would extend to cases where the injuries to the domiciliated person had resulted from a direct violation of the laws and sovereignty of the country of original political allegiance. Indeed, the statement in that opinion, referring

to the right of nativity," refer the next line (ment), "this is within the * * * "But the deck of a may rightfully

The commis time of war as tection, but as learned comm even as of a ti

After stating character," he time of war) u acter from res far as regards original allegia

However, th Rayner in the decision, for w ish subjects, al States, were n nished by Gre within the pro

The reasoni opinion, and w ment, is ill cor as we shall se

(b) The sec same opinion i quoted is not on internation

It will be se law, before cor if a claim wer

to the right of protection "as against the land of his nativity," referred only to the *person*, and then, as the next line states (not quoted in the British argument), "this protection inures only so long as he is within the pale of her jurisdiction." And again: * * * "But as long as he remains on the soil or the deck of a ship of the British Government he may rightfully claim protection."

The commissioner cites Kent as to the conditions in time of war as to alien enemies and their right to protection, but as it was unnecessary to the decision the learned commissioner did not cite this qualification even as of a time of war from Kent (1 Kent, 76):

After stating that "domicile is the test of national character," he goes on to say that the limitation (in time of war) upon the principle of determining character from residence is that the domiciled person *so far as regards his own country* (i. e., the country of original allegiance) "*must not take up arms against it.*"

However, the statement quoted from Commissioner Rayner in the opposing brief was not essential to the decision, for when he came to that he held that British subjects, although legally domiciled in the United States, were *not* entitled to any part of the fund furnished by Great Britain for the indemnity of persons within the protection of the United States.

The reasoning that follows, in the commissioner's opinion, and which is adverted to in the British argument, is ill considered and was not the true doctrine, as we shall see.

(b) The second quotation (on page 51) is from the same opinion in the same case, and the last paragraph quoted is not reasoned in the light of the authorities on international law.

It will be seen that in any case, under international law, before commissioners under any convention, that if a claim were presented in behalf of a British sub-

ject, unnaturalized in the United States but domiciled there, such claim resting on injuries sustained while violating the extraterritorial laws and sovereignty of Great Britain, as well as in the case stated by Commissioner Rayner, where he assumes that the Alabama claims were allowed against that nation for neglect to execute her own laws, the same answer which he there puts in the mouth of that nation would be returned, viz:

That is my affair. I am fully competent to take care of my own subjects.

But that Government would add also to the United States in a case like the present, were their positions reversed:

The policy of international law will not permit you to make reclamation from me, or to protect my subjects for a violation of my laws that bind them, or for rebellious defiance of my sovereign authority over a territory which I claim—and over which you do not claim—exclusive jurisdiction.

(c) *The Indian Chief.*

In that case the person had never lived in America after it became a nation (not after 1773). In addition, the decision was directly contrary to that stated in the text of the opposing argument, to wit: It was that the owner had lost the benefit of his native American character, if he ever had any, which he had not. This was not a case where the original citizen of one country, domiciled in another, was making a claim through the country of his domiciliation against the country of his original allegiance.

(d) The case of *The President* was a claim made in behalf of an American citizen domiciled at the Cape of Good Hope, a colony of Holland, with which nation England was at war. The only comment we make is that this was not a case where an American citizen, unnaturalized abroad and owing original alle-

giance to the against the co

(e) In the was domiciled point for the in the case of

It turned up mercantile and violation of th of Great Brita

No alien shall in the plantation

The case is a claim for ind ing the laws o and is very fa the country of make reclama juries so suffer

(f) This is *supra*.

We repeat, of Drummond him and reclama injuries suffer and claim of j

But taking class offered, be seen how to a point whi consideration

Suppose ins tion by *Britis* treaty providi by *civil subjec* Britain, inclu waters claime

giance to the United States, was making a claim against the country of his original allegiance.

(e) In the case of the *Matchless*, a British subject was domiciled in Boston, and it is a case strongly in point for the United States before this Commission in the case of the claimant Cooper.

It turned upon the law applicable to domicile for mercantile and trade purposes, and was for an alleged violation of the second section of the navigation laws of Great Britain, to wit:

No alien shall exercise the trade or occupation of a factor in the plantations.

The case is clearly not to the point cited. It is not a claim for indemnity for injuries suffered from violating the laws of England applying to British subjects, and is very far from an authority to the effect that the country of his domicile, the United States, could make reclamation against Great Britain for the injuries so suffered.

(f) This is Drummond's case (2 Knapp) discussed *supra*.

We repeat, if it were a case where France, because of Drummond's domicile, claimed the right to protect him and reclamation for him from Great Britain for injuries suffered while violating Great Britain's laws, and claim of jurisdiction, the case would be in point.

But taking this case for illustration of the whole class offered, let us carry it a step further and it will be seen how misleading it is to cite cases generally to a point which is not covered or approached in their consideration or decision.

Suppose instead of a treaty providing for reclamation by *British subjects against France* it had been a treaty providing for reclamation for injuries *suffered by civil subjects of France* in general against Great Britain, including domiciliated persons, in certain waters claimed by the British sovereign as jurisdic-

tional at the time of the injuries; assume that acts of Parliament had been passed forbidding under penalties all persons from doing certain acts in those waters,* and that in pursuance of the law the sovereign authority of Great Britain committed the injuries complained of; and, finally, assume that the case before the court had been whether Drummond, though a British subject, because of his domicile in France could through France make reclamation from Great Britain for the loss of his vessels while violating the claim of jurisdiction and the penal laws of his own country.

It is obvious that the decision must have been against the British subject, however long domiciled in France.

(g) The Countess of Conway's Case was a claim for compensation against France, under the same treaty as in Drummond's case (2 Knapp, 367). The Countess was not a British subject, nor domiciled there, and if she had been it did not appear that the claim was for injuries sustained by her while engaged in hostile acts against France (the country of her original allegiance), or in violating the laws of France applying to her.

(h) In *Livingston v. Maryland Company* (7 Cranch), decision by Story, J., is strongly against the position of Great Britain in cases like that of Cooper. It is not a decision, however, bearing at all upon the question here. It was not a claim made

* At one time Great Britain claimed as jurisdictional "the waters within lines drawn from headland to headland, as from Orfordness to the Foreland, and from Beachey Head to Dunnose Point" (Hall, Int. Law, p. 162). "A recent decision of the Privy Council has affirmed her jurisdiction over the Bay of Conception in Newfoundland, which penetrates forty miles into the land, and is fifteen miles in mean breadth." (Id.) In 1843 Great Britain claimed jurisdiction over the waters of the Bay of Fundy, which is from 65 to 75 miles wide, and 130 to 140 miles long, and under that claim Her Britannic Majesty's cruiser seized the schooner *Washington*, flying the American flag, for fishing in that bay. (See decision of British Umpire against Great Britain, Mixed Commission cases, under Convention of 1853, p. 170, *infra*, p. 108.)

against Spain, was not a claim consequences of action of her law

(i) "The *Fe* case is not in p

As to citizen that they were Great Britain, to the United injuries suffered act of violating question, and i jurisdiction of Government in taken in that a

It is to be ob ever as to this the Revised S 1956, etc., were States, which a "having all the admiralty," to seizure in the sovereign auth jurisdiction to c

Moreover, t jurisdiction or in terms and b tion, had, as to effect: and fun protection of a

In the argum nal the counse

The assertion of pute as to jurisdic tive branch of the

against Spain, the country of original allegiance, and was not a claim for injuries resulting from the consequences of acts hostile to that country, or for violation of her laws.

(i) "*The Venus*." For the reasons just stated this case is not in point

As to citizens of the United States, then, assuming that they were domiciled but not naturalized in Great Britain, what are their relations as claimants to the United States and Great Britain in respect of injuries suffered while sealing in Bering Sea, in the act of violating the laws of the United States in question, and in defying and attempting to elude the jurisdiction of the United States claimed by that Government in the waters where their property was taken in that act?

It is to be observed that there is no question whatever as to this proposition: That the provisions of the Revised Statutes of the United States, sections 1956, etc., were held by the courts of the United States, which as the Paris Award finds were courts "having all the jurisdiction and powers of courts of admiralty," to be statutes applying to the place of seizure in the waters of Bering Sea, and that all the sovereign authorities of the United States asserted the jurisdiction to execute those statutes in those waters.*

Finding No.
I, Paris
Award.

Finding I.

Moreover, that whether the United States had jurisdiction or not, those statutes by their construction in terms and by all the canons of statutory construction, had, as to United States citizens, an extraterritorial effect; and furthermore, were penal statutes for the protection of a trade.

In the argument submitted before the Paris Tribunal the counsel of Great Britain, at the head of whom

The assertion of sovereignty over territory, and in all cases of dispute as to jurisdiction contested by other nations rests with the Executive branch of the Government. See Whart. Dig., sec. 22 and cases.

extends, for unless the words are so clear that a contrary construction can in no way be avoided, I must presume that the Legislature did not intend to go beyond this power.

The laws of Great Britain affect her own subjects everywhere—foreigners only when within her own jurisdiction.

And in the United States the rule of international law, always held, is that the municipal laws of a nation extend over all citizens and subjects everywhere on the earth. (The Apollon, 9 Wheat., 362; Hudson v. Questier, 6 Cranch, 241, overruling 4 Cranch, 241.)

And throughout the argument on both sides before the Paris Tribunal, it is admitted that in so far as these statutes of the United States are concerned, they are of an extraterritorial character on their face, and the only contention was that, being municipal statutes, they, of course, could not bind foreigners.

And see Wheaton's conclusion that every nation has jurisdiction over all citizens, wherever found. (Dana's Wheat., §§ 113, 115.)

Now, until the joint resolution of Congress of the United States, in 1868, declaring the right of expatriation, which was shortly followed by the treaty between Great Britain and the United States of 1870, providing for naturalization, it was held by both Great Britain and the United States that a citizen could not throw off his original allegiance. ^{15 U. S. Stat. at L., 223.}

In the United States, the inclination of the judiciary has been to follow the rule of the English common law, and to hold that neither a native or naturalized citizen can throw off his allegiance without the consent of his State. (Kent's Com., 240; Story on Constitution, III, 3, Note 1; Wharton's State Trials, 654; Opinions of Attorneys-General, Vol. VIII, 157.)

The doctrine of original allegiance remains the same in both countries in every respect except in the case of actual and formal naturalization.

Lord Chief Justice Cockburn, in his "Nationality" (pages 214-215), after a full review of the whole subject, says: That "under a sound system of interna-

tional law such a thing as a double nationality should not be suffered to exist;" and that nothing short of actual naturalization carried out by solemn and formal act as the law of the particular country may require will have the effect to divest the subject of his former allegiance: "that renunciation of former allegiance or rights will not suffice to give the character of citizen or subject of the country of adoption, which can be acquired only by the act of naturalization itself; and that the effect of the naturalization is prospective only and has no retroactive operation." (And see Hall Int. Law, p. 240, as to the British doctrine.)

It is laid down by Hall (p. 244) that until a new allegiance is contracted by naturalization, even since the naturalization laws, a citizen must be considered as bound by his allegiance to the government under which he was born, and subject to its laws. "Until these laws [naturalization laws] are satisfied, the State into which a person has immigrated can have no right of protecting him." (Id., p. 255.)

In the view of counsel for the United States, the statement just quoted from Hall is too broad, but the undoubted and universal rule is laid down in a summary of this extraterritorial jurisdiction and sovereign right by Sir Sherston Baker's Halleck, Vol. I, 205:

Offenses against the law of a State, regulating or prohibiting any particular trade, if committed by foreigners within the territorial jurisdiction of another State, are not punishable by the tribunals of the State whose laws they have violated; but if committed by its citizens, they are so punishable, no matter where committed, whether within its own limits, on the high seas, or in a foreign country.

A distinction, however, must be made between mere commercial regulations permitting or prohibiting a certain trade, and statutes creating a criminal offense, with personal penalties expressly applicable to all the citizens of the State. The commercial domicile of a party may sometimes exempt him from the operation of the laws of trade of his own country, but while his former allegiance continues he is liable to

incur the penal consequences of the law of the country, which prevails within the reach of the law. Droit Int. Privé, XXII, pp. 381-383, 376, et seq.; H. secs. 5, 6.)

It need not be the law of the States, lying at the right of sea (p. 61), and it would not protect its person wherever it and

Of course such person of a citizen but no one would to seize upon him if the property upon the high seas

It is laid down of Int. Law, 6 the law of a State particular traffic, of navigation, are wherever they

In Bars' Privileges, 2d ed., in this case it may extend protection to other countries. ALLEGIANCE."

Judge E. R. Attorney-General the most distinguished Barclay case, has demonstrated that citizenship

In a learned

incur the penalties of a criminal offense against his own country, which penalties may be enforced whenever he comes within the reach of its municipal laws.—(Citing: Félix, Droit Int. Privé, sections 510-532; American Jurist, Vol. XXII, pp. 381-386; Masse, Droit Commercial, tom. II, sec. 38, 376, *et seq.*; Bello, Derecho Internacional, pt. I, Cap. IV, secs. 5, 6.)

It need not be argued that the absolute rights of States, lying at the foundation of everything else, is the right of self-preservation (Dana's Wheaton, sec. 61), and it would be a vain right if a nation could not protect its public property against its own citizens wherever it and they may be.

Of course such laws can not be enforced upon the person of a citizen if he be beyond the jurisdiction, but no one would deny the power of the government to seize upon his property for violation of such laws, if the property be found within the jurisdiction or upon the high seas.

It is laid down in Lawrence's Wheaton (Elements of Int. Law, 6th ed., p. 175) that offenses against the law of a State, prohibiting or regulating a *particular traffic*, or regulating the laws of trade and navigation, are binding upon the citizens of a State wherever they may be.

In Bars' Private Int. Law (Gillespie Trans. Edinburgh, 2d ed., p. 135 and notes) the undoubted rule in this case is laid down: "*The State of domicile may extend protection to a domiciled foreigner as against other countries, EXCEPT THE COUNTRY OF ORIGINAL ALLEGIANCE.*"

Judge E. Rockwood Hoar, of New England, former Attorney-General of the United States and one of the most distinguished lawyers of America, in the Barclay case, before the Mixed Commission of 1871, demonstrated that legal domicile in a country constituted citizenship of that country.

In a learned and most careful argument, showing

in its citations the most exhaustive research, he was compelled to admit that the conclusion of all the authorities on international law was that the nation of domicile could intervene for the protection of a person so domiciliated as against every nation *except the nation of his original citizenship*; that for certain purposes the local sovereignty could intervene and protect him even against that country, but *never in derogation of the rights of the country of his birth as recognized by international law*. (See argument of Judge Hoar on demurrer, Report of British Agent, Claims Commission of 1871, p. 280, and citations.)

The British position in that case was of course strongly for the exception so stated by Judge Hoar, as appears by the reported arguments of Her Majesty's counsel in the last citation.

In such case as stated by Kent (Lect. IV, sec. 25, p. 49): "The person so domiciled does not cease to be bound by the allegiance due to the country of his birth."

It has been seen that in the Barclay Case the demurrer was decided adversely to the United States on two grounds only:*

(1) The use of the term "British subject" in the convention, and

(2) That it appeared affirmatively, as admitted by the demurrer, that Barclay *had not violated the allegiance due from him to the country of his domicile*. (Report of British Agent, Com. '71, p. 297.)

In the Koszta case the United States asserted in the strongest possible terms the general doctrine of the allegiance of a domiciled person to the nation of his domicile.

* A synopsis of the opinion of the commissioners will be found at page 13 of the American Agent's Report (vol. 6), papers relating to the treaty of Washington.

It is the do
the British arg
takes no notic
cussed, more
by internation
come up for
stated. As h
in any of the
here, and in
question up fo

Koszta was
the right of th
protect him w

What the p
been as to Au
tary of State:

Had Koszta
he was seized,
been changed,
custody of Aus
on any principle
ton's Int. Dig.,

Joseph Bur
ship, which w
was American
sailed from N
purposes of p
of a domicilia
a sailor on a
ican territory
cile authorities

His claim
tion on the B

The point cam
the American Sec
Koszta in Turkey
subject of Austria
leck, c. XXIX, § 4

B S—

It is the doctrine which is so strongly asserted in the British argument here. But the British argument takes no notice of the exception, which we have discussed, more strongly and emphatically laid down by international authorities, when the question has come up for consideration, than the general rule stated. As has been seen, that exception was not in any of the cases cited in the British argument here, and in them there were no facts bringing the question up for consideration.

Kosztá was a native-born citizen of Austria, and the right of the Government of the United States to protect him was asserted against Turkey—not Austria.

What the position of the United States would have been as to Austria is stated as follows by the Secretary of State:

Had Kosztá been within the jurisdiction of Austria when he was seized, the whole character of the case would have been changed, and the forcible taking of him from the legal custody of Austrian officers could not have been defended on any principle of municipal or international law.* (2 Wharton's Int. Dig., p. 505, sec. 203.)

Joseph Burns was a sailor on an American whaler-ship, which was sunk by the *Alabama*. The whaler was American, because she was American owned, and sailed from New Bedford, Mass. He therefore, for the purposes of protection by his nation, had all the rights of a domiciliated citizen, and something more, that of a sailor on a ship which was beyond question American territory, because American owned. (See Domicile authorities *supra*.)

His claim was disallowed by the Geneva Arbitration on the British showing that he was apparently a

* The point came up directly with Austria in Simon Tonsig's case, and the American Secretary of State, Mr. Marcy, who had sought to protect Kosztá in Turkey, declined to intervene to protect Tonsig, an original subject of Austria, and who had returned there temporarily. (See Halleck, c. XXIX, § 4.) Am. Ed.

British subject.* (See *West v. United States*, cited in the British argument at p. 50 as the Worth case, and papers relating to Treaty of Washington—"Claims.")

It inevitably follows that Great Britain could not intervene for the protection of and reclamation for American citizens domiciled in Great Britain as against the United States in cases where their property had been taken by the authority of the sovereignty of the United States for violation of the municipal laws in question and for defiance of the sovereign claims of that nation.

NOT NATIONAL CLAIMS.

The British argument seeks to avoid this conclusion, both in the case of Cooper and in the case of the American citizens alleged to be domiciliated in Great Britain, on the ground that these are not private claims, but national claims, in the sense that they are to be recovered in the individual right, so to speak, of the Government of Great Britain; and it cites (p. 49) the case where China paid to the British Government \$3,000,000 on account of debts due to British subjects from certain Chinese merchants. Hence, the contention is that no defense going to the national status of a claimant can be made.

Of course, in the case stated there was no Claims Convention and no provision in the treaty, as in this, limiting the recovery of the British Government to the case of "persons" on whose account she might

* An examination of the record discloses that Burns, the sailor, was deceased, and that his claim was presented by his father as his legal representative, who resided at Manchester, England; but before the Mixed Commission of 1871 it was held in such a case that the right to recover depended upon the national character of the deceased, and not upon that of his administrator.

"The Commissioners are all of the opinion that the particular nationality of the administrator does not affect the question." (P. 18, cases 109-212-205.)

be entitled to and finding of

The distinction Blackburn, J. in this case is itself, where (2 Knapp) at

That was shown in the that the record and status of

It is true that they are the nation before them; and as its protection to take up the tire doctrine of at page 48.

Of course there are no exceptions to the principle of wrongs of government must be the claim. Another Government of international unless a demand of country of war (See United States v. Wharton's

This is the in the claims

Under all throughout them have been for or against personal status;

be entitled to claim, and no provision for the auditing and finding of "each" claim.

The distinction between that case, as stated by Blackburn, J., in the passage quoted at page 49, and this case is broadly drawn in the British argument itself, where it quotes from the Drummond case (2 Knapp) at page 53. B. Arg., pp. 49, 53.

That was a Claims Convention, and it is clearly shown in the passage quoted from the vice-chancellor that the recovery depends upon *the personal relations and status of the claimant quoad the claim*.

It is true that these are national claims in the sense that they are presented against the United States by the nation because there is no other way to present them; and any Government owes it to those within its protection in respect of its obligations to its citizens to take up their cause as a nation, and this is the entire doctrine quoted from Wharton in the British brief at page 48.

Of course it is the universal doctrine, to which there are no exceptions, that if a citizen of one nation complains of wrong done him by another nation, his Government must assume the responsibility of presenting the claim. A claim on behalf of foreign subjects of another Government under the established rules of international law is not entitled to consideration unless a demand is made by the Government of the country of which the claimant is a subject or citizen. (See *United States v. Diekelman*, 92 U. S., 520, and 2 Wharton's Dig., sec. 214 *et seq.*)

This is the entire extent of Great Britain's interest in the claims.

Under all claims conventions between nations throughout their history, the Commissioners under them have been occupied for the most part in deciding for or against claimants on the question of their personal status; and this much space is devoted to that

subject solely out of respect and deference to the learned counsel who are instructed to present the point at some length at various places in their argument for Great Britain.*

"UNITED STATES OWNERSHIP," OR THE BEARING OF THE REGISTRY AND THE FLAG ON THIS CONTROVERSY.

The caption "United States ownership" is taken from the opposing brief for convenience of treatment.

It is not seen, however, how any question of national ownership can be involved, as would be the case if a *public ship* were in question.

It is not clear how the learning presented in the argument for Great Britain regarding the registry, the flag, the right of search, and so on, is relevant.

Whatever of inviolability from and conclusiveness against inquiry there may have been, or whatever other question of national dignity may have been involved, it is submitted at the outset that all these considerations have been set aside by the provision of the convention itself, reserving to the United States (whatsoever the flag, the registry, or the dignity) the RIGHT to inquire into ownership, especially with reference to the defense resting on citizenship.

The denial of liability on the part of the United States, it is clear, goes not only to the claim like that of Cooper, who for the purposes of this controversy was a citizen of the United States, but to the claims of the native-born or naturalized American citizens who are alleged to have been domiciled in Great Britain.

It would seem to be the position of Great Britain that the award of the arbitrators at Paris, and the present convention, which was its direct issue and

* See this argument pp. 82, 84, et. seq., and p. 127.

sequel, did a inquiry into

It is said, question of "actual" own can citizens, the time of testimony up occupy other after all is de pose of the evidence sha sides are in t That the reg clusive presu that the sho register is co vessel are B

Two Nat infinite pain arbitration, a and again o producing s Signs of the all the histo it is said no

mus. Only Now the other hand,

First. Th inquiry, lea determined as a matter that determ missioners a

This arg national la

sequel, did a wholly vain thing in providing for the inquiry into citizenship of owners.

It is said, true, the United States may raise the question of liability on ownership and show that the "actual" owners of the seized ships were in fact American citizens, and may fill the entire record and occupy the time of the Commission for months in adducing testimony upon that point, and Great Britain may occupy other months with counter testimony, but that after all is done, this is the utmost extent of the purpose of the provision; that immediately after the evidence shall be closed, and the record made, both sides are in the same position they were before, in this: That the registry, the flag, and so on are still a conclusive presumption on the question of ownership, i. e., that the showing of the British flag and the British register is conclusive evidence that the owners of a vessel are British subjects!

Two Nations seemed to conceive, and through infinite pains of labor, in negotiation, in treaty, in arbitration, and again of negotiation, again of treaty, and again of arbitration, to have been in the way of producing something that might be called a result. Signs of the pains to this particular end run through all the history of a decade and a half. But after all, it is said nothing came of it, not even the *ridiculus mus*. Only vacuum, and no birth!

Now the positions of the United States, on the other hand, are these:

First. That the convention opened the door to the inquiry, leaving the question of citizenship to be determined on the testimony by the Commissioners as a matter of fact, and the question of liability on that determination of fact to be decided by the Commissioners as a matter of international law.

This argument has discussed the questions of international law under this proposition in respect of

British subjects domiciled in the United States and American subjects alleged to be domiciled in Great Britain, on the assumption that it might be open to argument—which is now denied—after establishing citizenship of either character as a matter of fact, that there remained a juridical question as to liability under the treaty and convention or international law.

Second. That by the Treaty of Washington of 1892, the award and finding of the tribunal under it, and this convention it was intended to be settled that no citizen of the United States could recover a claim on account of injuries as an owner and holder in whole or in part of a vessel.

Words of such significance as "by its citizens," in Article VIII of the treaty of 1892, could not even in a contract be set aside as having no meaning; and they certainly can not be eliminated from a solemn treaty between nations by a mere observation on the part of one of them that those words had not been intentionally used (opposing argument, p. 38, fol. 20), especially as the inquiry as to citizenship is reserved all through the award, the findings of fact, and this convention.

It was clearly the intention of those who drafted the findings of fact to conclude this question in harmony with the provisions of Article VIII of the treaty of 1892.

The present lord chief justice of England drafted those findings of fact. (See his statement to the president of the Court of Arbitration, 13 American Reprint, p. 55 and context.)

At page 48 of the same colloquy, he made this statement to the arbitrators:

The findings that the vessels, the names of which appear in the case, have been seized while exercising a legal right would not conclude the liability of the United States to pay it, for instance, it turned out that some of those vessels were owned by citizens of the United States and subject to the laws of the United States.

And again,

Mr. Justice H
is left for future
Sir CHARLES
Mr. Justice I
Sir CHARLES
little more than
the matter in g
of that amount
the claimants
they are United

Apart from
award, finding
considered as
and this will

Assuming t
not concluded
Britain are n
international

It is claim

Under no pri
open to the Un
flag or register.

And the sa
is stated in o

The learni
of Search in
reason that t
nite and unsa
as have been

Up to the
disclaimed th
"permission
flag.

The last of
ernment to c

And again, at page 54, this appears:

Mr. Justice HARLAN (one of the arbitrators). What, then, is left for future negotiation?

Sir CHARLES RUSSELL. The question of amount.

Mr. Justice HARLAN. Only of amount?

Sir CHARLES RUSSELL. The question of amount, and a little more than amount; a question of amount, speaking of the matter in gross; a question of liability as regards items of that amount; as, for instance, the question of whether the claimants put forward are entitled to claim—whether they are United States citizens.

Apart from the conclusiveness of the treaty, award, findings, and convention, let it be tentatively considered as an open question of international law, and this will be considered under—

NATIONALITY FOLLOWS OWNERSHIP.

Assuming that the question is still a juridical one, not concluded by the treaty, the positions of Great Britain are not tenable in any court administering international law.

It is claimed that:

Under no principle known to the law of nations can it be open to the United States in time of peace to go behind the flag or register. (Brit. Argument, p. 39, fol. 30.)

And the same thing as to the register and the flag is stated in other places.

The learning and industry bestowed on The Right of Search in the opposing brief is impressive, for the reason that the conclusion arrived at is not as indefinite and unsatisfactory on that much discussed subject as have been all other declarations of Great Britain.

Up to the present time that Government has never disclaimed the right, or, as it is called in the argument, "permission to visit" a vessel flying the United States flag.

The last official communication of the British Government to complete the correspondence there quoted

on the subject is the letter of Lord Malmesbury of June 11, 1858, to Lord Napier (Brit. and For. State Papers, 1857-8, Vol. 50, p. 537), as follows:

General Cass observes, in his note to Mr. Napier of April 10, 1858, that "a merchant vessel upon the high seas is protected by her national character. He who forcibly enters her does so upon his own responsibility. *Undoubtedly, if a vessel assumes a national character to which she is not entitled, and is sailing under false colors, she can not be protected by this assumption of a nationality to which she has no claim.*

"As the identity of a person must be determined by the officer bearing a process for his arrest and determined at the risk of such officer, so must the national identity of a vessel be determined at the like hazard to him who, doubting the flag she displays, searches her to ascertain her true character.

"There no doubt may be circumstances which would go far to modify the complaints a nation would have a right to make for a violation of its sovereignty. If the boarding officer had just grounds of suspicion, and deported himself with propriety in the performance of his task, doing no injury, and peaceably returning when satisfied of his error, no nation would make such an act the subject of serious reclamation."

Her Majesty's Government [continues Lord Malmesbury] agree entirely in this view of the case, and the question, therefore, becomes one solely of discretion on the part of the boarding officer.

So that, after all, it seems from the British position the question of right and wrong and damages would be one for judicial inquiry in the end.

But the discussion of the right of search is, by the way, and in the present connection, only academic. The question here is as to the *right of American authority to take an American-owned ship, whatever her registry.*

The United States must decline to accept as international law on the subject the municipal instructions of Great Britain to registrars of shipping, as quoted on page 43, folio 40, of the opposing argument.

The rule of international law as to the effect of registry among nations has been stated by Great Britain

before a court of law; "British

The effect of a British flag and the conditions necessary for a ship not already a vessel of a certain law, and of a description, is British or not.

It is not the duty of a court of either law or equity to determine ownership. As a vessel is tendered to him

For false statement to a penalty, and the owner is liable to forfeit his interest

In Great Britain it is positively required that a ship be disadvantageous and ensure it are practicable British-owned ships

The register, the MUNICIPAL LAW as owner, IS NOT the other parties, NO OF THE NATION to a foreigner, at ship, is sufficient ability of the vessel. The law of registration, trade and navigation, poses; and a ship declaration of the FURTHER proof.

(Chief Justice Taunt, 357)

The register of nations as expressed

Smith's Mercantile

No ship is necessary to com

before a court of nations, as follows (Geneva Arbitration; "British Case and Evidence," Vol. I, p. 79):

The effect of registry is to entitle the ship to use the British flag and assume the British national character. The conditions necessary for obtaining registry, in the case of a ship not already registered, are the production to the registrar of a certificate by the builder, in a form prescribed by law, and of a declaration (also in prescribed form) *that the ship is British owned.*

It is not the duty of the registrar to question or ascertain the accuracy of either the builder's certificate or the declaration of ownership. As a ministerial officer, he is bound to accept them if tendered to him.

For false statements in the certificate the builder is liable to a penalty, and for making a willfully false declaration the owner is liable to be indicted for a misdemeanor and to forfeit his interest in the ship.

In Great Britain, as in the United States, the law does not positively require the registration of any vessel. But the disadvantages and disabilities incurred by omitting to procure it are practically sufficient to make the registration of British-owned ships universal.

The register, though in ordinary questions arising UNDER MUNICIPAL LAW evidence of the title of the person registered as owner, IS NOT CONCLUSIVE in a question arising between other parties, NOR IS IT NECESSARILY SUFFICIENT PROOF OF THE NATIONAL CHARACTER OF THE SHIP. A transfer to a foreigner, at sea, or beyond seas, of a registered British ship, is sufficient to change its ownership and the nationality of the vessel, though not followed by any registry. The law of registry is a part of the law by which British trade and navigation are regulated for fiscal and other purposes; and a ship is registered as British on the voluntary declaration of the person claiming to be owner WITHOUT FURTHER proof.

Chief Justice Mansfield (in *Cheminant v. Pierson*, 4 Taunt., 357) said:

The register is not a document required by the law of nations as expressive of the ship's national character.

Smith's Mercantile Law (pp. 143-4):

No ship is required to be registered, registry only being necessary to confer privileges on that particular ship.

Parsons's Maritime Law (Vol. I, p. 39):

The law is unwilling to recognize in the fact of registration any other efficiency than that of imparting certain privileges, or to permit the absence of that registration to have any other effect than merely to prevent those privileges from attaching to the ship.

Kent (Vol. III, p. 146).

The registry is not a document required by the law of nations. The registry acts are to be considered as forms of local or municipal institutions for purposes of public policy.

But the leading American case is by Justice Story, in 15 Pet. 513-543, and is conclusive. (See Analysis, *infra*, p. 78.)

The Attorney-General of the United States (6th Attorney-Generals' Opinions, 349):

The statutes do not require a vessel to be registered and enrolled; and if owned by a citizen of the United States she is American property, and possessed of all the general rights of the property of an American.

And at page 652 he speaks of the right of an American citizen to purchase and own a foreign ship, and says:

The ship so purchased becomes entitled to bear the flag and receive the protection of the United States.

And see Whart. Dig. (sec. 410, p. 993), for a full review of the question by the author sustaining the position taken here on this question.

Henry, the author of Admiralty Jurisdiction and Procedure, in a carefully prepared letter printed in 3 Whart. Dig., sec. 410, sums up the international question in these words—as to the vessel's character:

The question as to the disabilities which the municipal rules of the Government of the owners might impose on such vessels did not concern other nations nor affect their nationality.

* * * * *

So far as the international side of the question is concerned, the position of such vessels is fixed. Although the right of

such vessels to carry arms is discussed in two later chapters, for such a question is not a question of nationality.

The national flag is used to convey the name to which the vessel belongs.

The word "flag" is used in international law to denote nationality of the vessel.

A vessel as a subject of international law is not a vessel of any other nationality than that of the owner.

In *Barker v. P.*

12, 307), Kent, C.

"vessel" as a war

ship is a vessel wh

though not re

states. And in

the present ben

been no depart

ity follows pri

nationality. See

op. 249-260-3,

ring the judgm

high seas: "Cor

of the territory

long." "The

the owners of

the United State

in navigable wa

to be high seas.

Courts of ad

and it is a comm

disputes as to th

relations as to th

each vessels to carry the flag of the United States has been discussed in two late papers, there could hardly be occasion for such a question. A vessel's flag is only its signal to other vessels at sea.

The national bunting displayed is a communication to other vessels of the nationality of her owner, as her other signals are used to convey the name of the private owner, or of the line to which the vessel belongs.

The word "flag," when used either in public or private international law, in maritime subjects, designates the nationality of the vessel, *arising from ownership*.

A vessel as a subject of nationality is not considered a personality any more than any other chattel, and can not have any other nationality impressed on it except that arising from ownership.

In *Barker v. Phoenix Insurance Company* (8 Johns. R. 307), Kent, C. J., held that the words "American vessel" as a warranty of national character is fulfilled by a vessel wholly owned by American citizens, although not registered as a vessel of the United States. And in the United States from Story to the present bench of the Supreme Court there has been no departure from the principle that nationality follows private ownership—not ownership nationality. See *United States v. Rogers*, 150 U. S., pp. 249-260-3, where Mr. Justice Field, in delivering the judgment of the court, says of ships on the high seas: "Constructively they constitute a portion of the territory of the nation to which their owners belong." "The admiralty jurisdiction of the country of the owners of the steamer, they being citizens of the United States, is not denied, and the steamer being in navigable waters * * * we hold these waters to be high seas."

Courts of admiralty administer international law, and it is a common thing for those courts to entertain disputes as to the ownership of vessels, and other litigations as to them, although such vessels are owned

by foreigners, and showing as documented and registered as foreign ships; and the judgment of those courts or the title passing by condemnation, is conclusive everywhere.

In the case cited in the British argument (*Risoluta*, p. 31, fol. 50), the suit was a collision case in the British Admiralty, and wholly between French and Italian owners.

In the case of the *Experiment* (2 Dod., 38), William Scott held the question of ownership of a Spanish documented ship, documented as Spanish owned, could be settled in the British court.

In *United States v. Brune* (2 Wall., Jr., 264) it was held "that the registry was not even *prima facie* evidence of the ownership."

Sir Sherston Baker's Halleck (Vol. I, p. 438):

The national character of merchant ships is, "as a general rule, determined by that of their owners."

And Dr. Phillimore, in his Int. Law (Vol. III, sec. CCCCLXXXV), says:

Ships are deemed to belong to the country under whose flag and pass they navigate; and this circumstance is conclusive upon their character. * * * When, however, it is said that the flag and pass are conclusive on the character of the ship, the meaning is this: That the party who takes the benefit of them is himself bound by them; he is not at liberty, when they happen to operate to his disadvantage, to turn round and deny the character which he has worn for his own benefit and upon the credit of his own oath or solemn declarations; but they do not bind other parties as against him. Other parties are at liberty to show that these are spurious credentials, assumed for the purpose of disguising the real character of the vessel; and it is no incontestable part of the ordinary occupation of a prize court to pull off this mask and exhibit the vessel so disguised in her true character of an enemy's vessel.

Again, agreeing with Halleck, Phillimore says:

But, in general, and unless in special circumstances, the national character of ships depends upon the residence of the owner.

It is only ships of regular trade of a nation of the government of the character of

(Can there be a ship sold to a British or an American citizen without registration, and the nationality of the ship is character and the opposing President Grant President Grant ended for in the

When, therefore, a ship is under the flag of a nation, it is as against the right to fly that flag

On pursuing a ship in 3 Wharves, *prima facie* case property of a citizen, the true and only appeared that the citizens of the United States and the salute to the United States that Spain that the *Virginia* of the United States

But the *Virginia* dignity of the United States claims preference in international commerce under all claims of civil status of the

It is only ships and cargoes engaged in the privileged and peculiar trade of a nation, under a special contract and the sanction of the government, that are considered as affected by the character of the nation.

Can there be any doubt that an American ship may be sold to a British subject, or a British ship be sold to an American citizen, in any part of the world, without registration, or any doubt that in such a case the nationality of the purchaser would give to the ship his character and the protection of his national flag.

The opposing argument quotes the message of President Grant, in 1873, in the case of the *Virginus*.

President Grant does not make the statement contended for in the argument, but says, as there quoted:

When, therefore, she left the port of Kingston, in October last, under the flag of the United States, *she would appear to have had*, as against all powers except the United States, the right to fly that flag, etc.

On pursuing the history of the *Virginus* case, as given in 3 Wharton's Int. Dig., it appears that on the *prima facie* case presented, the *Virginus* was the property of a citizen of the United States, who was the true and only owner of the vessel. But it having appeared that the *Virginus* was not owned in fact by citizens of the United States, the apology from Spain and the salute to the flag of the United States were dispensed with, as it was conceded by the United States that Spain had a right to adduce proof to show that the *Virginus* was not rightfully carrying the flag of the United States.

But the *Virginus* and similar cases involving the dignity of the nation have no bearing whatever upon claims preferred under a claims convention in an international court, when their rectitude depends, as under all claims conventions, upon the political or civil status of the claimant.

Mr. Bayard correctly stated the law regarding nationality in the passage from his letter quoted on page 42, folio 30, of the British argument:

By the law of nations * * * the citizens or subjects of a particular country, *who are the owners of a ship*, are entitled to carry on such ship when at sea the flag of such country, and such flag is to be regarded by all foreign sovereigns as the badge of nationality.

Even Hall says that the flag is only the apparent sign of the nationality of a ship, if a ship of private ownership. Its master is not an agent of the State, as in the case of a public vessel.

In *The Sisters* (5 C. Rob., 155; see 3 Kent, 130) Lord Stowell said:

A bill of sale is the proper title to which the maritime courts of all countries would look. It is the universal instrument of the transfer of ships in the usage of all maritime countries.

The flag, then, the outward symbol of ownership, should properly correspond with the bill of sale. (11 Atty. Genl. Op., 72, 1866.)

And, finally, we have on the question Judge Story, an authority on international law, received by British publicists and jurists, as well as by the entire world, as in the front rank, where there are but two—the great Lord Stowell and Story.

We have him, too, on this question, not as a text writer, but from the bench of the Supreme Court of the United States, delivering the judgment of that court as to the law in such case in time of peace. (See 15 Peters, pp. 518-543 *supra*; U. S. v. *Armistead*.)

This was the case of a Spanish registered and documented ship. Not only was she documented as a Spanish ship and as Spanish owned, but, by treaty between the nations, certain privileges were guaranteed ships of either nation so documented.

It was held that the ship's papers—witnessing ownership, that if a vessel's reality belong to one country, it is entitled to any rights which were endeavoring to assert under the flag, that it would be to hold it in the disguise."

This was in the comments upon the rule in time of peace.

The authorities (4-45) of the British are reviewed as follows:

(a) 16 Peters.

This was a doctrine of a creditor and an agent, whether the register of the Federal statute of ownership as against a national ship was not, and that it was as contemplated by the purpose of Congress as a national ship.

(b) 16 Wall.

This was also a case between a bankrupt and a creditor. The bankrupt was a Massachusetts, and the creditor was New York. It was held that the ship was a public vessel, and the bankrupt was against the attachment of the ship. (See Catlett v. Catlett, 594.)

It was held that the registry and documents—the ship's papers—were but *prima facie* evidence of Spanish ownership, and the language of the court was that if a vessel under those circumstances "should in reality belong to the subjects of another nation not entitled to any such privileges, and the proprietors were endeavoring by fraud to cover their own illegal acts under the flag of Spain, there can be no doubt that it would be the duty of our courts to strip off the disguise."

This was in time of peace, and Mr. Justice Story comments upon that, and says that the above is the rule in time of peace.

The authorities submitted on this subject (at pp. 44-45) of the British argument are not in point, and are reviewed as follows:

(a) 16 Peters, 215—*Hosey v. Buchanan*.

This was a domestic litigation between a judgment creditor and another, and involved the question of whether the registry of a transfer of a ship under a Federal statute was a prerequisite to a change of ownership as against creditors. The decision was that it was not, and the court proceeded to say that registry as contemplated by the Federal law was only for the purpose of conferring certain privileges on a ship as a national ship.

(b) 16 Wall., 610, *Crapo v. Kelley*.

This was also a domestic suit, involving a conflict between a bankruptcy assignee and an attaching creditor. The bankruptcy assignee was appointed in Massachusetts, and the creditor attached the ship in New York. It was held "for the purposes of the suit" that the ship was a portion of the territory of Massachusetts, and the bankruptcy assignment passed the title against the attachment. Nothing else was decided.

(c) *Carlett v. The Pacific Company* (1 Paine's Digest, 594).

It appears distinctly from the decision of the court, in the opinion printed, that there the question was whether the implied warranty in a policy of insurance that the ship was an American vessel had been complied with. It appeared, as stated, that she was (1) "*Owned by American citizens*;" and (2) *It was "conceded"* that if she *also* had an American register on board, it would have been a compliance with the warranty. The essential thing disputed, evidently, was the question of American ownership, and the effect of registry was not in issue.

If this case is supposed to decide that an American registry is conclusive of ownership, it may be said in passing that the case was *cited* as shedding some light on the subject (and to that extent probably it is here) in the United States Supreme Court on the argument in 15 Peters, 518, *supra*, where the contention there and here was distinctly overruled.

(d) The texts quoted from in all of folio 50 (pp. 44-45), British argument, do not appear to be cited, but it is assumed that they refer to the *Virginus* case already discussed in this argument.

(e) Direct issue is taken with the British argument (p. 45) in the position that the same principle of conclusiveness applies to the registry of a ship as to naturalization papers, and if the quotation from Wharton (2 Whart. Dig., 354)—from which the fragment from the communication of Mr. Evarts is taken—had been continued, it would have been seen that the inviolability of naturalization papers was put upon entirely different ground.

That ground was this: That naturalization was a decree or judgment issued by a competent court of the United States, and that therefore the executive department of the Government could not for itself, or through any authority to an international commission

authorize an in such a court.

It is not with vacate a decree court of the Un court granting t entitled to receive rendered by cou impeachable for necessarily pass Hamlin, 2 Whart

This doctrine the leading ca Case."

This is quit would be appli no judicial or to do.

The executi what is a test General's Opin found in agreee States that the ship.

It follows on that ownership istry, confes t

The position may again be

That nation emphasis, that of peace, any at its peril.

* The British argu ing and especially the sovereign auth ownership.

authorize an inquiry going behind the judgment of such a court.

It is not within the power of the Secretary of State to vacate a decree of naturalization issued by a competent court of the United States. * * * The judgment of a court granting to an individual the rights of citizenship is entitled to receive the respect given to all other judgments rendered by courts of competent jurisdiction, and if not impeachable for fraud, is conclusive as to all the facts necessarily passed upon. (The Secretary of State to Mr. Hamlin, 2 Whart. Dig., p. 355.)

This doctrine is familiar in the United States from the leading case in the Supreme Court—"Spratt's Case."

This is quite a different principle from that which would be applied to the registry of a ship, with which no judicial or quasi-judicial authority has anything to do.

The executive position of the United States as to what is a test of nationality is stated in 6 Attorney-General's Opinions at pages 649-652, and there it is found in agreement with the Judiciary of the United States that the test of nationality is private ownership.

It follows on British and American authority alike, that ownership, and *bona fide* ownership, and not registry, confers the right to carry the flag.*

The position of the United States here, as always, may again be repeated.

That nation asserts without qualification, and with emphasis, that where the flag floats over a ship in time of peace, any other nation invades the deck under it at its peril.

*The British argument confuses registry with "ship's papers," embracing and especially meaning the "sea letter" or "Ship's pass," issued by the sovereign authority only after official investigation as to actual ownership.

The flag and not the registry should be *prima facie* evidence of ownership. If it should turn out, however, that the flag does not truly represent the actual ownership, there is no ground for reclamation on behalf of the owners who turn out to be actual citizens or subjects of the nation so invading the ship.

Whatever there may be of affront to the flag in such a case is wholly a question between nations, with which private persons have nothing to do and for which they can make no profit.

To do so would be to elevate the incidental inferior private interest into the place of the paramount public one.

To do so in cases where satisfaction for offended dignity is due would be to demand for one individual the reparation owing to all the people of a great nation. Take the case of the British ship *Trent*, where an American cruiser took from under the British flag the American citizens Mason and Slidell.

This being an act of a public ship of the United States, that country was, of course, responsible for it.

The proceeding was variously designated as "wanton," as a "wanton insult," "piratical attack,"* and so on. An apology was demanded by Great Britain and a return of Mason and Slidell to the protection of the British flag. But the suggestion was never dreamed of that Mason and Slidell could have had any claim through Great Britain or otherwise for damages, for their imprisonment and treatment, from the United States.

The case of *The Caroline*.† The vessel was an American ship under the American flag and in American waters. Great Britain sent her military force under McLeod into the territory of the United States and destroyed the ship.

* See Brit. For. State Papers, "*Trent*."

† See full history of the case (1 Sir Sherston Baker's Hall's, p. 477, and Wharton's Dig., § 21, 350).

Great Britain the acts of McLeod satisfaction for the of territory. G the territory on ducing evidence *Caroline* was aic

The matter w Governments. the British sub soil and suffered the authority of

Both Govern Britain—asserte unlawful, as the Great Britain a

Subsequently 1853,* Great B for damages.

It was held b be brought befo because it grev which had been

The case will questions before claimants of or on British soil. question of nat subject domicil realized there, w tion against Gr person or prop Could it be ser successfully ma States against C while acting in Great Britain?

* See Rep

Great Britain acknowledged her responsibility for the acts of McLeod, and the United States demanded satisfaction for the affront to the flag and the invasion of territory. Great Britain asserted the right to enter the territory on the ground of self-preservation, adducing evidence of an insurrection, and that *The Caroline* was aiding it.

The matter was satisfactorily adjusted between the Governments. In the meantime, however, McLeod, the British subject, had been arrested on American soil and suffered a long term of imprisonment under the authority of the State of New York.

Both Governments—the United States and Great Britain—asserted that imprisonment to have been unlawful, as the act of McLeod had been assumed by Great Britain as her act.

Subsequently, under the Mixed Commission of 1853,* Great Britain made reclamation for McLeod for damages.

It was held by the British umpire that it could not be brought before the commissioners as a private claim, because it grew out of a purely national question which had been adjusted between the two countries.

The case will serve for further illustration on the questions before these High Commissioners as to the claimants of original American allegiance domiciled on British soil. Aside from the adjustment of the question of national affront, suppose that a British subject domiciled in the United States, and unnaturalized there, while in the act of aiding the insurrection against Great Britain, had been damaged in his person or property rights by McLeod's invasion. Could it be seriously contended that he could have successfully made reclamation through the United States against Great Britain for his injuries suffered while acting in violation of his original allegiance to Great Britain?

* See Report of Agent of the United States, 314.

Or suppose *The Carolina* had, as a matter of fact, turned out to be the property of such British subject legally domiciled in the United States, or of an American citizen legally domiciled in Great Britain. Could either have made reclamation against Great Britain through the United States?

On the distinction between questions of the kind arising between nations in respect of the inviolability of national territory and the emblem of the national dignity, and those in respect of the claims of individual citizens presented by one nation for personal or property injuries against another, it is broadly and well drawn by counsel in the case of *McHugh* and others against The United States, before the Mixed Commission under the Treaty of Washington (report of British agent, p. 567, Appendix No. 7, 52*), as follows:

The question before this Commission is not whether Great Britain has suffered grievance or insult at the hands of the United States in the case in which reclamation is sought. If it were so, it would be entirely immaterial whether the intestate, Sherman, were a British subject or no, he having been arrested on British soil. The injury to Great Britain was by the unlawful invasion of her territory and the taking thence by force of a person under the protection of her laws.

Whether that person was an American citizen or British subject is of no importance. She has the same right of complaint against the United States for the unlawful and wrongful arrest of an American citizen upon her soil, and his removal by force from the protection of her laws, as she would have for the same treatment of a British subject.

But it surely can not be contended that, by reason of such injury to the sovereignty of Great Britain, Sherman, if in fact an American citizen, would have a standing before this tribunal to make reclamation under the treaty.

He would have to stand upon his character as a British subject and upon that only; and it would be only by virtue of such national character that he could make reclamation here.

This particular claim, as appears by the report, i. e.

* Parliamentary Papers, North America, No. 2, 1874.

that of Mrs. S. by the Commis

The very poi by Baron Blam Campbell and American Comm

The ship *M* flag and on th American ship. violation of the eighty of the sented by the here, as one on

The umpire

The umpire ca this as a case of its direct object of their flag.

In such a case stitute the princ sonal situation subordinate.

But no such case or could, in the to this tribunal.

At another p

Irrelevant und how far, if at all thorized by inter on the part of th the offended sove

The claim w that although tion of Spain, pired that the unlawful as ag not recover on vention.

that of Mrs. Sherman, was unanimously disallowed by the Commissioners.

The very point was elaborately stated and decided by Baron Blanc, the umpire, in claims 94 and 95, Campbell and others *v.* Spain, under the Spanish and American Commission of February 12, 1871.

The ship *Mary Lowell* was under the American flag and on the high seas, duly documented as an American ship. The umpire finds distinctly that the violation of the flag was an offense against the sovereignty of the United States. The claim was presented by the United States, as claims are presented here, as one on account of the owner.

The umpire says:

The umpire can not be legitimately called upon to treat this as a case of the United States against Spain having for its direct object a suitable reparation for the offended dignity of their flag.

In such a case the regularity of the capture would constitute the principal question to be considered—the personal situation of the owners of the property becoming subordinate.

But no such case of the United States against Spain has been or could, in the opinion of the umpire, properly be presented to this tribunal.

At another place he says that it is—

Irrelevant under the circumstances of this case to state how far, if at all, the acts of the Spanish forces were unauthorized by international law, and such as to create a claim on the part of the United States against Spain in behalf of the offended sovereignty of their flag.

The claim was therefore dismissed on the ground that although the seizure was outside of the jurisdiction of Spain, and on the high seas, yet, as it transpired that the owners were engaged in an enterprise unlawful as against Spain, the United States could not recover on their account under the Claims Convention.

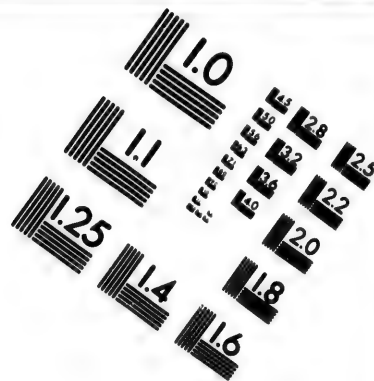
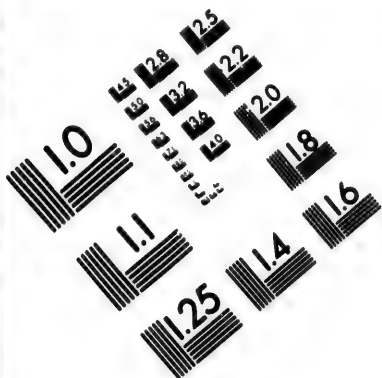
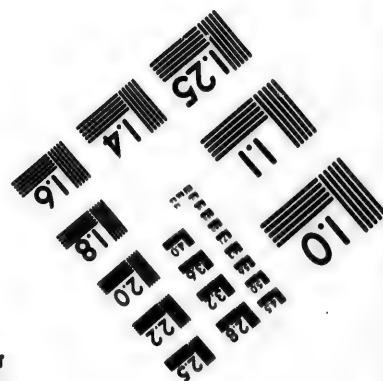
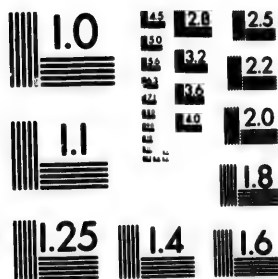


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.4
2.8
3.2
2.5
2.2
2.0

10
01

CONCLUSION ON THE QUESTION OF AMERICAN CITIZENSHIP AND OWNERSHIP.

The specific claims eliminated.

The Cooper claims: The *Grace*, *Dolphin*, *Anna Beck*, and the *Sayward*.

The Alexander Frank claims: The *Alfred Adams*, *Black Diamond*, seized July 11, 1889, and the *Lily*.

The Andrew J. Bechtel claims: The *Carolena* and *Pathfinder*.

The Daniel McLean claim: (The larger) *Triumph*.

The Alexander McLean claims: The *Onward* and *Favourite*.

The foregoing ships were all seized in the years 1886, 1887, and 1889, and appear as follows in the schedule of British claims filed at Paris (pp. 1 to 60 inclusive), as referred to this Commission under the convention as owned and claimed for as follows:

The Cooper claims:

As to the *Grace*, *Dolphin*, *Anna Beck*, and *Sayward*, the entire ownership and entire claim for compensation for the seizure are in Thomas H. Cooper.

The Alexander Frank claims:

As to the *Alfred Adams*, Gutman, owner, his partner, the said Frank, being equally interested with Gutman in the results of the sealing voyage.

As to the *Black Diamond*, "registered" owner Morris Moss.

As to the *Lily*, "registered" owner Morris Moss.

The Andrew J. Bechtel claims:

As to the *Carolena*, the entire ownership in Munsie.

As to the *Pathfinder*, ownership half in the partnership, and a quarter each in the individual members of the firm of Carne & Munsie.

The Daniel McLean claim:

As to the larger *Triumph*, 21 shares in Edgar Crowe Baker; 22 shares in Daniel McLean, and 21 shares in one Gibson and Blackett.

The Alexan
As to the
and claimant.

As to the
and claimant.

It appears
that the Uni
them by the
contradiction
Paris, have
citizens, as
claimants at

The *Alfred*
Alexander F

The *Carole*
A. J. Bechtel

The *Trium*
McLean, clai

the United
domiciled in

The *Onwa*
ander McLea
United State

It may be
such cases, t
under prior
carries its o
nation to ma
"in whose b
compensation
upon that na
things:

First, and
vention and o
was under th
with a legal
or not in the

The Alexander McLean claims:

As to the *Onward*, Charles Spring as sole owner and claimant.

As to the *Favourite*, Charles Spring as sole owner and claimant.

It appears by the testimony cited in this record that the United States, under the right reserved to them by the Paris Award and this Convention, in contradiction of the above schedule as presented at Paris, have shown actual ownership in American citizens, as of the time of seizure, and the actual claimants at the time of the Convention, as follows:

The *Alfred Adams*, *Lily*, and the *Black Diamond* in Alexander Frank, an American citizen.

The *Carolena* and *Pathfinder* in whole or in part in A. J. Bechtel, an American citizen.

The *Triumph*, 22 shares out of 64 in all in Daniel McLean, claimed to be a political and civil citizen of the United States, and in any case a civil citizen domiciled in the United States.

The *Onward* and the *Favourite* one-half in Alexander McLean, an American citizen domiciled in the United States.

It may be stated in this connection as the rule in such cases, to which there have been no exceptions under prior commissions, and as a proposition which carries its own demonstration, that to entitle that nation to make reclamation for anyone as a person "in whose behalf Great Britain is entitled to claim compensation from the United States," the burden is upon that nation to establish at the very outset two things:

First, and before all else, that at the time of the Convention and of the presentation of the claim the claimant was under the protection of Great Britain as a citizen, with a legal domicile in the dominions of that nation or not in the United States;

And second, it must also be established that at the time of the injury of which complaint is made the person was under the protection of Great Britain as a citizen, and domiciled within her dominions, or not in the United States, or, as the equivalent of domicile and citizenship, was on board a ship, as one of the officers or crew, owned by a British subject in British territory or on the high seas.

Both conditions must concur.

It need not be argued that a person who may have been injured by a nation can not afterwards become naturalized or domiciled in that nation, and thus become a political or civil citizen, or both, and thereafter invoke the aid of the country of his original citizenship against the nation of his existing citizenship.

And so the Convention provides, Article I, that the persons for whom reclamation may be made by Great Britain must be persons who then, at the time of the convention (and as held in other Commissions, at the time of the presentation of the claim), were under the protection of Great Britain in virtue of a claim of either civil or political citizenship, as above defined.

Here, again, the incongruity, not to say absurdity, of Great Britain's position as to Cooper is manifest.

A resident and a civil citizen of the United States since 1854, with the courts open to him as to an American native-born citizen, enjoying the protection of its laws, without returning to his country of original citizenship to present this claim, he remains a citizen of the United States, and instead of appealing for relief for his alleged wrongs to that Government, or its courts, he invokes a foreign nation to aid him in recovering from the United States.

The rule is undoubted and universally acknowledged that the recourse of a domiciled person for injuries against the Government of his domicile is in

the courts of in Wharton a Britain:

A citizen of property there British troops, the country ur Dig., sec. 241, a

Kenworthy Hally et al. Washington, Case, British

As heretofore ground for in allegiance un the person be tween him an

It appears the subject of citizen of a c icile in the c that the burc country is up may be at on as has been

point made i the McLeans. in Great Brita States to the the burden w establish the

On the rec Frank's domic as a domicile Residence an (Halleck, Ch i millimore-D

the courts of that country. The principle is stated in Wharton as applied in our relations with Great Britain:

A citizen of the United States residing in Canada, whose property there situate has been destroyed and pillaged by British troops, must first seek redress from the tribunals of the country under whose laws he has settled. (2 Whart. Dig., sec. 241, and see sec. 226.)

Kenworthy's Case, Mixed Commission, 1853; Hally et al. Commission, 1871; see 6 Papers, etc., Washington, pp. 19-20; Anderson's Case, id.; Boyd's Case, British Agent's Report, p. 12.

As heretofore seen in such cases, there can be no ground for intervention by the country of original allegiance unless there be discrimination as against the person because of his political nationality as between him and citizens of the country of his domicile.

It appears by the authorities hereinbefore cited on the subject of domicile that the presumption is that a citizen of a country has his residence and legal domicile in the country of his political citizenship, and that the burden to establish domicile in any other country is upon the person alleging it. The burden may be at once shifted by showing actual residence, as has been seen, but if there be anything in the point made in the opposing argument as to Frank, the McLeans, and Bechtel on their alleged domicile in Great Britain against the contention of the United States to the contrary as heretofore presented, then the burden would certainly be upon Great Britain to establish the fact of domicile conclusively.

On the record there is no pretense of the proof of Frank's domicile in Victoria. There is no such thing as a domicile for purposes of trade without *residence*. Residence and home is the supreme test of domicile. (Halleck, Ch. XXIX, sec. 13 (Am. Ed.), and cases. Millimore-Domicile, secs. 221, 224, 256, 258.)

It appears that he was a partner of Gutman, but there is no proof whatever that he was a resident of Victoria, as he was not. (Record, 1993, line 50.)

Q. In November, 1888, were you a resident of Victoria?

A. I believe I was; am not quite positive about the time. I went to San Francisco either the latter part of 1888 or early part of 1889, and I stayed there several months.

This is all there is bearing on residence.

Appended hereto, (page —) entitled "Appendix 2," is presented all the testimony in the record, and every item of it bearing upon the citizenship or residence of Alexander Frank, Andrew J. Bechtel, Daniel McLean, Alexander McLean, and Thomas H. Cooper.

As to Bechtel, there is no conclusion upon his testimony, because he contradicts himself directly by his several oaths, and is shown hereafter under the head, "Carolena," to be unworthy of credit. *Falsus in Uno, falsus in omnibus*. His hotel business is no evidence of domicile. See authorities *supra prox*. In an affidavit he has sworn that he was at one time a resident of California, and afterwards, in an affidavit, as in his testimony here, covering the period of his affidavit in California, he swears that he was a resident of Victoria. His affidavit to the contrary in Victoria is not evidence for him, and his admission of residence in California is evidence here. From the witness box at Victoria, throughout his examination, he was dumb on the question of his residence in California; while Munsie testifies to the time when Bechtel was living in California, in corroboration of the admission by affidavit. His ownership of real estate is no evidence of domicile. (Sir W. Scott in *The Dree Gebroeders*, 4 Rob., p. 235.)

There is no evidence that either Frank or Bechtel were domiciled in Great Britain at the time of the Convention. Daniel McLean, as appears by the record, became a naturalized citizen of the United States on October 5, 1882, and he became such under the Naturalization Treaty between Great Britain and the United States of 1870.

See p. — Appendix 2.

He could not be naturalized in Great Britain to his allegiance provided in that naturalized in Great Britain ineffective.

There is no conclusion in the record upon his residence in San Francisco of Luby that he was in 1883 as a resident of the *City of San Francisco*.

As to Alexander McLean, there is no conclusion upon his testimony in Victoria as to whether he was interested for a long time in the hotel business and ever since he came to San Francisco.

On the question of his relation to a domicile, aim to make a conclusion under all the circumstances.

It follows, that there is no ground hereto for a political subject, and no conclusion upon his citizenship as a resident of domicile (a person domiciled in the argument of the postulate of domicile has been the basis of the seizure and detention of a person).

The question of citizenship by an

* See argument of Washington, v.

He could not surrender that citizenship and return to his allegiance to Great Britain except as provided in that treaty, and his form of becoming naturalized in Great Britain on October 16, 1886, was ineffective.

There is not a word as to his residence in Victoria in the record, but there is a statement of his residence in San Francisco in 1892, and the testimony of Luby that Daniel McLean appeared at Victoria in 1883 as one of the crew of the American vessel the *City of San Diego*. Rec., 689.

See App. 2.

As to Alexander McLean's American citizenship there is no question; and while the testimony as to him is the strongest in the record as to any residence in Victoria at the time of the seizure of the ships he was interested in, there is no question whatever that for a long time prior to the Convention, at its date, and ever since he has had his domicile in the city of San Francisco.

On the question of burden of proof to establish the relation to a person which would enable Great Britain to make reclamation, it is settled by the decisions under all the Commissions heretofore referred to.*

It follows, that if Great Britain shall shift from the ground heretofore taken, that ownership in that nation's political subjects is concluded by showing a ship's register, and now claim the right to protect American citizens as against their own country because of their domicile (a proposition never heard of before except in the argument here), the change should start from the postulate as to them, that their domicile by residence has been conclusively shown, both at the time of the seizure, and at the time of the treaty and presentation of the claims.

The question remains as to the effect of part ownership by an American citizen with a British subject.

* See argument—citation of Sir Roundell Palmer, papers, etc. Treaty of Washington, vol. 3, p. 25, last paragraph cited.

If joint owners or partners, the whole claim must fail beyond question.

A recovery can not in such case be had for a moiety by the rules of international or common law.

The right to the protection of this Government may be acquired by birth, by naturalization, or in some cases and for some purposes by domicile in the United States. No other mode occurs to me, nor do I now perceive the authority of an officer of this Government, except in virtue of a treaty or other positive legislation, to bring a new subject within the sphere of its obligations. Least of all can I discern any faculty in a private citizen to spread the protection of his Government over a third person by adopting him as a partner in a commercial establishment in foreign parts.

Mr. Fish, Sec.
of State,
to Mr. De
Long, MSS.
Inst. Ja-
pan.

Whatever the rule, however, on this subject, the United States desires to urge it only as against those persons who have suffered their names to be used by American citizens, or have permitted the investments of American citizens, with them jointly, having the object in view to aid such citizens to violate the laws of their country under cover of such arrangements, and have befouled their consciences in the effort to sustain the frauds. This objection is not urged by the United States as against the owners of the *Triumph*, in respect of the shares in the former held by Mr. Baker and his associates, who were British subjects, and in respect of the interest in the *Onward* owned by Mr. Spring, who was also a British subject. If it should seem to the Commissioners that there is anything of compensation to be found due on account of the *Favourite* on the claim as finally testified to by her owners at Victoria, Mr. Spring's interest should be treated like that in the *Onward*. In such cases, however, the question of jurisdiction remains for the Commissioners to decide, as it can not be waived by the counsel for the United States.

COMPENSA

Under this
question of

Pro

The theory
personal pro
abandoning
ply its place
he sees fit; a
limited to th

The follow
the present c

The claim
to Great Br
tional or pos
on both nati
on analogou
nal of Arbit

The claim
its, and the
on the high
allowed by
national law
ment of eit
national or

And of th

* See the contin

COMPENSATION, OR THE MEASURE OF DAMAGES.

Under this head it is proposed first to consider the question of

*Prospective catch and loss of catch.**

The theory of all law on the subject of the loss of personal property, is, that the party deprived of it or abandoning it to the converter may immediately supply its place in the market with its money value if he sees fit; and therefore his measure of recovery is limited to the value of the property lost.

The following propositions are maintained under the present convention:

(One.)

The claim for prospective catch is settled adversely to Great Britain by what has been seen is conventional or positive international law, fixed and binding on both nations, viz., a decision of the precise question on analogous facts by the adjudication of the Tribunal of Arbitration at Geneva.

(Two.)

The claim for prospective catch, prospective profits, and the like, in cases of marine torts or captures on the high seas, however tortious, has never been allowed by any tribunal or court administering international law, or by any authoritative judicial judgment of either country, whether administering international or the municipal common law.

And of these in their order.

* See the contingencies and uncertainties of pelagic sealing, p. 177, *infra*.

(ONE.)

The judgment at Geneva.

By the treaty of Washington, Article VI, it was provided as follows:

In deciding the matters submitted to the arbitrators, they shall be governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the arbitrators shall determine to have been applicable to the case.

Then follow the three rules as to duties of neutrals in time of war; and the article closes with this provision:

And the high contracting parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime powers and to invite them to accede to them.

It is apparent that, as to the rule of damages, the arbitrators were bound by the principles of international law, and that their decision upon that question must be held to be the international law as between these nations, according to the authorities cited in this argument at page 20, *supra et seq.*

That rule is binding under this Convention unless—(a) the position taken in the British argument (p. 25, fol. 20) be correct, that the Tribunal did not really decide against the principle of prospective profits; or (b) there is something in the facts here that distinguishes the principle to be applied; or (c) a distinction is to be made, as claimed in the British argument, on the ground that the torts in that case were not directly committed by Great Britain with her own cruisers.

(a)

A somewhat remarkable statement is found in the British argument (p. 25, fol. 20), as follows:

A reference to the proceedings before the Geneva Arbitration will show that as a matter of fact, although this general

proposition was prospective profit

By reference award was final equal to 25 per cent of prospect \$988,000.

This is a st

After a ver the question d had rested the but ten days prospective p counsel for the claims of the as stated, "In of the arbitra nated from th whaling vesse of which wo that those cla of the tables not wholly w

(See Paper 579-580, and pp. 602-609.)

In Protoco tors made the August 29, 1

Now, in Pr ment, here, st the award wa a sum equal catch," it app the protocol not an award as one of th copies of the a proposition

proposition was laid down in the award, a sum in lieu of prospective profits was allowed to the Government.

By reference to protocol No. 29 it will appear that the award was finally made upon the basis of allowing a sum equal to 25 per cent of the value of the vessel and outfit in lieu of prospective catch, this sum amounting in that case to \$988,000.

This is a striking error.

After a very full and most exhaustive discussion of the question of prospective catch, and after both sides had rested the entire argument, on August 19, 1872—but ten days before the first formal ruling against prospective profits—the arbitrators requested the counsel for the United States to present tables of the claims of the United States, and then in those tables, as stated, "In accordance with the suggestions of some of the arbitrators (the counsel say), we have eliminated from the tables the claims submitted in favor of whaling vessels for the prospective catch, the amount of which would be \$4,009,302.50;" and it appears that those claims were so eliminated for the purposes of the tables for the use of the arbitrators, although not wholly withdrawn.

(See Papers, Treaty of Washington, Vol. III, pp. 579-580, and attached tables under head Shenandoah, pp. 602-609.)

In Protocol XXVII (Id., Vol. IV, p. 43) the arbitrators made their first ruling against prospective profits August 29, 1872.

Now, in Protocol XXIX, by which the British argument, here, states, as above quoted, "it will appear that the award was finally made up on the basis of allowing a sum equal to 25 per cent, etc., in lieu of prospective catch," it appears as a matter of fact, and as stated in the protocol itself, that the only figures presented was not an award or a finding at all, "but that M. Staempfli, as one of the arbitrators, presented to the Tribunal copies of the synoptical table which he had prepared as a proposition for the determination of a sum in gross."

We will see directly how that arbitrator came to put in the item "prospective profits and interruption of voyage" in this his own mere personal suggestion to the Tribunal.

But as appears by the same protocol (XXIX) the arbitrator for Great Britain, Sir Alexander Cockburn, promptly attacked the item in question, saying:

M. Staempfli has also added, for some unknown reason, 25 per cent on the values of the whalers, an addition which can be easily shown to be equivalent to altogether allowing over and above the original value of the whalers and their outfits, a percentage exceeding 90 per cent, and this although the question of interest is left open to the decision of the Tribunal.

This all occurred on *September 2, 1872*—seven days before the award of the arbitrators. (Vol. IV, id., pp. 44 to 47.)

The award was finally agreed to and adopted, as appears by Protocol XXXI, on *September 9, 1872*, and in it is the *final* decision on the question of prospective profits in these words (see id., p. 53):

And whereas prospective earnings can not properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies, the tribunal is unanimously of opinion that there is *no ground* for awarding to the United States *any sum* by way of indemnity under this head.

That is the final judgment, adopted *seven days after* protocol 29 (referred to in the opposing argument as above quoted) was made and signed by the arbitrators on *September 2, 1872*, and after M. Staempfli had then made the suggestion (called the award by the opposing argument) so vigorously and successfully contested by the arbitrator for Great Britain.

The error of M. Staempfli in protocol 29, is thus shown to have been fully discussed and ruled to be an error, and expressly ruled as *not* having the approval of the Tribunal.

It is a matter that is manifest that it was misled in an admission memorandum.

At page 106, dence, fifth paragraph, whaling vessels prospective catch that interest in the value of cents per ton expenditures being included date of capture sustained in r

M. Staempfli's opinion that 25 per cent was given to Great Britain as a percentage of the value of the whalers was 25 per cent which had been

It is apparent in their award for the limited amount as above

It is submitted that the Geneva Arbitration profits should be that, after a series of decisions, made by the United States

Claim for was made on or captured, for

It is a matter of no importance here, but it is apparent that in making his suggestion M. Staempfli was misled in assuming that Great Britain had made an admission in their case to the effect set out in his memorandum suggestion. Thus:

At page 1009 of the British counter case and evidence, fifth paragraph, it was suggested as to the *whaling vessels* (in regard to which *only* any claim for prospective catch was made by the United States) that interest at the rate of "25 per cent per annum on the value of each ship and outfit, and in addition 5 cents per ton per day to meet expenses on account of expenditures and other disbursements, both amounts being included *between the day of leaving port and the date of capture*, would provide for the loss actually sustained in respect of the forty-one whalers."

M. Staempfli evidently understood from this admission that 25 per cent *of value* was admitted by Great Britain as a proper measure of damages in the case of the whalers, when the fact was, as above quoted, it was 25 per cent *per annum interest* for the limited time, which had been suggested in behalf of Great Britain.

It is apparent that the arbitrators allowed no interest in their award except on account of the whalers, and for the limited period suggested in the British argument as above.

It is submitted that it has been demonstrated that the Geneva Arbitration did decide that prospective profits should not be allowed. Indeed, it is apparent that, after a very exhaustive examination of the decisions, made by both sides in the argument, the United States substantially abandoned the claim.

(b.)

Claim for prospective catch or prospective profits was made only for the forty-one whalers destroyed or captured, for the most part, by the *Shenandoah*.

It appeared that these vessels were taken on the whaling grounds, many of them with captured whales actually alongside; all of them successfully engaged, and all with more or less bone and oil on board, with every hope of a large catch.

It appeared, too, that substantially the same evidence as to the fishing grounds was presented under the claim for prospective catch as presented here, including the evidence that masters and crews had their "lays" or shares in the voyages.

Vol. III, Papers, Treaty of Washington, pp. 253-254; 2 Id., 384, and specific evidence of probable catch and estimates. "Am. Claims."

Paraphrasing the British argument at page 25, fol. 40, as to seals: *The vessels were found on the whaling grounds, with every appliance for catching whales; the whales were there to be caught.*

(c)

It is not apparent from the learning on the subject, heretofore recorded, that there is any difference in the rule of damages for marine tort, whether that tort be the result of negligence or of direct action. For the most part, such torts are those of negligence; and if Great Britain was liable at all for the depredations of the Alabama cruisers, she was liable for a wrong, and liable for the usual measure of damages as for a wrong.

The case of *The Amiable Nancy* (3 Wheaton, p. 546) was a case of capture, of which Mr. Justice Story, in delivering the opinion of the court, said:

"Upon these facts disclosed, this must be pronounced a case of gross and wanton outrage, without any just provocation or excuse." But the court held that "the probable or possible benefits of a voyage can never offer a safe rule by which to estimate damages in cases of a marine trespass."

But it is fol. 30):

A radical and the press contended that to cause the result of the

This is an itself quoting against Gre

The charge Tribunal was ment as "a Case, Vol. I

It was co that the act "actual or

erates whic Great Brita lands." (T

220-222-22

The who beginning to establish th by the act awarded:

The default are grave, se

If you des ble carelesse been more c deliberate m it be the gre greatest poss and just con

Such, ind responsibility require that utmost conce by possibilit

But it is stated in the opposing argument (p. 25, fol. 30):

A radical distinction exists between the *Alabama* case and the present. In the case of the *Alabama* it was *not contended* that it was the design of the British Government to cause the loss which ensued, nor was such loss the direct result of the negligence with which they were charged.

This is answered from the British argument here, itself quoting the positions of the United States against Great Britain (p. 21, fol. 10 *et seq.*).

The charge of the United States before the Geneva Tribunal was considered by Her Majesty's Government as "a charge of injurious negligence." (Brit. Case, Vol. I, Papers, Treaty of Washington, p. 412.)

It was contended on the part of the United States that the acts of Great Britain were of a character by "actual or constructive complicity with the Confederates which gave the same rights against her as Great Britain asserted by war against the Netherlands." (*Id.*, Vol. III, p. 218, and see *id.*, pp. 219-220-222-223.)

The whole argument of the United States, from beginning to the end of the Geneva Tribunal, was to establish these propositions, as against Great Britain, by the acts of cruisers for which damages were awarded:

The defaults charged, and as we think, the defaults proved, are grave, serious, capital. * * * *Id.*, p. 220.

If you destroy my ship, my house, or my horse, by culpable carelessness, it is no answer to say that you might have been more careless, nay, that you might have acted with deliberate malice. If there be responsible wrong, whether it be the greatest possible wrong or a degree less than the greatest possible, still the indemnity follows as a legitimate and just consequence.

Such, indeed, is the tenor of the treaty, which attaches responsibility to mere want of "due diligence," and does not require that Great Britain should have been guilty of the utmost conceivable degree of willful negligence which could by possibility be committed by any Government.

Again:

Id., p. 223. Such is the relative predicament of Great Britain and the United States. We have been injured as a nation by acts of a maritime war happening, as the counsel think they have proved, by the culpable and responsible negligence of the British Government. The wrong is direct as between the two nations.

And the Geneva Tribunal found Great Britain guilty of a tort by the following language of the award:

And whereas the circumstances out of which the facts constituting the subject-matter of the present controversy arose were of a nature to call for the exercise on the part of Her Britannic Majesty's Government of all possible solicitude for the observance of the rights and duties involved in the proclamation of neutrality issued by Her Majesty on the 13th day of May, 1861.

* * * * *

And whereas the Government of Her Britannic Majesty can not justify itself for a failure in due diligence on the plea of the inefficiency of the legal means of action which it possessed;

Four of the arbitrators, for the reasons above assigned, and the fifth, for reasons separately assigned by him, are of opinion—

That Great Britain has in this case failed, by omission, to fulfill the duties prescribed in the first and the third of the rules established by the VI Article of the Treaty of Washington.

And see the vigorous terms "offender" and "negligence" in the Award. (Award, Vol. 4, Papers Relating to Treaty of Washington, pp. 49, 50, 51.)

A failure of due diligence is one of the standard definitions of negligence and of "culpable negligence."

Culpable negligence is not actionable unless it results in injury, and recovery can not be had for it, then, unless the negligence is the direct or proximate cause of the injury.

So that the Geneva Tribunal having found culpable negligence on the part of Great Britain and an

injury, the measure to be taken in this case.

It is submitted that the tribunal on principle should award damages in this case.

There is no prospective catch in the law, or in the application of the law.

There is no after consideration of the merits again proposed to the opposing party.

It should be the duty of the owners who have suffered a total loss to file a claim. Cases of this kind.

The leading case of *The Amie* (1861) is cited *infra*; the case of *The Amie* (1861) is cited *infra*; p. 315, *infra*; 3 Wheaton, 315.

The probability of a *prospect* can never be a ground for a claim in cases of negligence in the future or extending in sustaining a claim. I believe it proper to award damages.

The *Amie* is cited.

In cases of this kind that the probability of a claim is too uncertain a rule is too uncertain a rule for applicability.

injury, the measure of recovery applied by it is the measure to be applied in all cases of marine tort, and in this case.

It is submitted that the ruling of the Geneva Tribunal on prospective catch is the law—the law of this case.

(TWO.)

There is no authority for the allowance of prospective catch or prospective profits in international law, or in the judgments of the courts of either nation.

There is no conflict whatever on the subject, and after considering the English and American judgments against the allowance of such damages it is proposed to analyze the citations to the contrary in the opposing argument.

It should be borne in mind that the claims of owners which are now being discussed are claims for total loss to them, and not cases of warning or detention. Cases of warning will be treated separately.

The leading cases are cited as follows: The English case of the *Columbus* (2 W. Robinson, p. 158, *infra*); the American case of the *Lively* (Garrison, p. 315, *infra*). In the case of *The Amiable Nancy*, 3 Wheaton, p. 346:

The probable or possible benefits of a voyage as yet *in fieri* can never afford a safe rule by which to estimate damages in cases of a *marine trespass*. There is so much uncertainty in the rule itself, so many contingencies which may vary or extinguish its application, and so many difficulties in sustaining its legal correctness, that the court can not believe it proper to entertain it.

The *Amistad de Rues* (5 Wheaton, p. 385):

In cases of *marine torts* this court has deliberately settled that the probable profits of a voyage are not a fit mode for the ascertainment of damages. It is considered that the rule is too uncertain in its own nature and too limited in its applicability to entitle it to judicial sanction.

In the British Counter Case, Geneva Arbitration (pp. 990, 991), we find this statement of the law:

When once the liability to compensation for a given loss is established, such compensation is to be estimated in accordance with the well-recognized principle of *restitutio in integrum*, subject, however, to those considerations as to the damages not being of too remote, contingent, or speculative a character, which, being common to the jurisprudence of all civilized nations, are adopted by international law, and seem to us therefore properly applicable to the present question.

It is on this principle, limited by these considerations, that the courts of common law and of admiralty, as well as the prize courts, both in England and America, have awarded damages in cases of collision, capture, and others of a like nature.

Thus, in the case of the *Amalia* (5 New Reports, 164), Dr. Lushington, the late very eminent judge of the high court of admiralty of England, said:

"Where a collision has taken place and one of the parties to the collision has been placed in the situation of the wrongdoer, according to all ordinary principles of justice the party injured ought to receive full and entire indemnity for his loss. This is a principle of common justice. It is undoubtedly the rule originally prevailing in all these cases, and is technically styled *restitutio in integrum*. It is not only the doctrine of the court of admiralty, but the doctrine of the courts of common law."

Again, in the case of *Clyde* (Swabey R., 23), the same learned judge said:

"As to the principle upon which the court proceeds in these cases there is, I apprehend, no doubt whatever. That has been laid down in the *Gazelle*, namely, that whenever damage is done by one vessel to another the parties are to be restored to the same state as they were in before the accident—that is to say, they are to have the full value of the property lost; *restitutio in integrum* is the leading maxim."

So, in the American case of *Williamson v. Barrett* (13 Howard, 101), it is said: "The general rule in regulating damages in cases of collision is to allow the injured party an indemnity to the extent of the loss sustained."*

* This was a case of detention, not total loss; see opinions of three justices, including Taney, C. J., laying down the rule of the text and dissenting because not applied to a case of detention precisely as to a total loss.

On the other considerations above (Robinson, 158).

"It has been court proceeds *in integrum*; in other who has received he would have As a general position is correct other courts I where an injury either by him makes him re entitled to an i the general principle is utterly impossible to adopt that the remedy to the precise a

* * * * "L effect in all cases the full value stance, that the on her outward cargo on board the owners be me + " must be from allowance this court takes these contingencies in addition to am clearly of

"The true rule this, viz, to calculate the time of the indemnity to the entering for a principle to the smack in this application to the court. It and in every case only the value

On the other hand that general rule is limited by the considerations above referred to. Thus, in the *Columbus* (2 W. Robinson, 158), Dr. Lushington said:

"It has been argued that the principle upon which this court proceeds in all matters of this kind is *restitutio in integrum*; in other words, the principle of replacing the party who has received the damage in the same position in which he would have been provided the collision had not occurred. As a general proposition, undoubtedly the principle in question is correctly stated, and not only in this court but in all other courts I apprehend the general rule of law is that where an injury is committed by one individual to another, either by himself or his servant, for whose acts the law makes him responsible, the party receiving the injury is entitled to an indemnity for the same. But although this is the general principle of law all courts have found it necessary to adopt certain rules for the application of it, and it is utterly impossible in all the various cases that may arise that the remedy which the law may give should always be to the precise amount of the loss or injury sustained.

* * * "Let us for a moment consider what would be the effect in all cases of this kind of giving anything beyond the full value of the vessel destroyed. Supposing, for instance, that this vessel had been an East Indiaman bound on her outward voyage to the East Indies with a valuable cargo on board, for the transportation of which not only would the owners be entitled to a large amount of freight, but the vessel must be entitled to considerable contingent profits from allowances made to him upon such a voyage. Could this court take upon itself to decide upon the amount of these contingencies, and to decree the payment of the same in addition to the payment of the full value of the ship? I am clearly of the opinion that it could not.

"The true rule of law in such a case would, I conceive, be this, viz, to calculate the value of the property destroyed at the time of the loss, and to pay it to the owners as a full indemnity to them for all that may have happened, without entering for a moment into any other consideration. If the principle to the contrary contended for by the owners of the smack in this case were once admitted, I see no limit in this application to the difficulties which would be imposed upon the court. It would extend to almost endless ramifications, and in every case I might be called upon to determine not only the value of the ship but the profits to be derived on

the voyage in which she might be engaged; and, indeed, even to those of the return voyage, which might be said to have been defeated by the collision. Upon this consideration alone I should not, I conceive, be justified in admitting this claim."

The same qualification of the broad principle of *restitutio in integrum* is laid down by Mr. Justice Story in several reported cases, as, for instance, in the case of the *Lively* (1 Gallison, 315), where that most eminent American judge said, in reference to damages for loss of cargo:

"Upon the whole I am satisfied that the profits, upon the supposition of a prosperous termination of the voyage, ought not in any case to constitute an item of damage. * * * I am satisfied upon principle that an allowance of damages upon the basis of a calculation of profits is inadmissible. The rule would be in the highest degree unfavorable to the interests of the community; the subject would be involved in utter uncertainty.

"The calculation would proceed upon contingencies, and would require a knowledge of foreign markets to an exactness in point of time and value which would sometimes present embarrassing obstacles. Much would depend upon the length of the voyage and the season of arrival, much upon the vigilance and activity of the master, and much upon the momentary demand. After all, it would be a calculation upon conjecture and not upon facts. Such a rule, therefore, has been rejected by courts of law in ordinary cases, and instead of deciding upon the gains or losses of parties in particular instances, a uniform interest has been applied as the measure of damages for the detention of property."

See also Parsons on Shipping, Vol. I, p. 538, and Sedgwick on Damages, p. 70.

The reason of the rule against allowing prospective catch or probable profits is well stated in the English case of the *Columbus* (2 W. Robinson, p. 158), a fishing vessel:

In them (the claims) exist all those elements of uncertainty, remoteness, and difficulty which would undoubtedly lead the courts, both in America and in England, to reject the claims altogether.*

* See subsequent head on Contingencies of sealing, p. 177, this argument.

Decision

In the year
It was called
outrage comm
coast upon a
under the flag
States."*

The act wa
of Brazil, for
ment was res
the vessel, re

Not only w
dignity of th
to citizens o
stances were
at the time w
and was in ir

The unqu
need not be
stances a ves
all nations, a
liability to th
own.

On March
between Bra
question of l
to the arbitra
for a long ti
minister at V

Sir Edwar
which he fou

The Cana
Brazilian ju
by her capta

* Dispatch of
ister for foreign

Decisions of other international tribunals.

In the year 1867 an especially hard case occurred. It was called in the diplomatic correspondence "an outrage committed on the high seas near the Brazilian coast upon a whaleship called the *Canada*, sailing under the flag and belonging to citizens of the United States."*

The act was committed by the military authorities of Brazil, for which, of course, the Brazilian Government was responsible. It consisted of the capture of the vessel, resulting in her loss to the owners.

Not only was the act an affront to the flag and the dignity of the United States and a disastrous wrong to citizens of the United States, but the circumstances were particularly atrocious, in that the whaler at the time was in distress, having run on the rocks, and was in imminent danger of shipwreck.

The unquestioned principle of international law need not be here referred to, that in such circumstances a vessel is held to be under the protection of all nations, and free from the ordinary rules as to liability to the laws of port of any nation except its own.

On March 14, 1870, a convention was concluded between Brazil and the United States by which the question of liability and compensation was referred to the arbitration of Sir Edward Thornton, then, and for a long time thereafter, Her Britannic Majesty's minister at Washington.

Sir Edward made his award on July 11, 1870, by which he found the following facts:

The *Canada* grounded on a reef of rocks within Brazilian jurisdiction. The proper means were used by her captain and crew with every prospect of suc-

* Dispatch of Secretary Fish to Mr. Blow communicated to the minister for foreign affairs, December 28, 1869.

cess to get her off, and on December 1 a Brazilian officer with 14 armed men boarded her, superseded the authority of the captain, and forcibly prevented the further prosecution of their efforts to save the ship.

That she would in fact have been saved but for this improper interference, and that she was lost through the interference.

Evidence was introduced as to the possible and prospective catch if she had been permitted to proceed on her voyage.

The amount of the prospective catch was demonstrated by her own previous catches and by the catches of other whalers for the same season.

The distinguished arbitrator of course held Brazil liable for the full value of the loss so inflicted on the citizens of the United States, and that a full compensation and indemnity became actually due from the moment of the loss; but on the question of prospective catch, the arbitrator, in ruling against it, uses this language:

I can not admit in any case the right to probable profits, because the ship might have been lost at the beginning of her voyage, or the expedition might have been altogether a failure and profitless. (Vol. 66, Brit. and For. State Papers, 1874-5, pp. 204-209.)

Great Britain made a claim against Germany for the destruction of certain British vessels in the Seine by the forces of Germany in 1871, in behalf of her subjects, the owners. The claims were first audited and examined (as these should have been) authoritatively by the British Government, and for this purpose were referred to the lords of the privy council for trade. There was also a reference to and a report from the learned registrar of the court of Admiralty, Mr. Rothery.

The result v
Lord Enfield o

The followin
and For. State

As regards the
of ships over an
and of the mast
board are advise

The claims pre
values of the v
board, or were a
the owners for h
erty, and compe
loss of their emp

A further ques
owners are entitl
vessel and cargo
that if they had
might have cont
a prosperous tra
One gentleman c
pated profits of
claim it indirect
have estimated
whether in the
quite inadmissib

The principle
very clearly laid
Columbus, repor
case of a *fishing*
utterly lost, and
the smack havin
£89 for wages a
average profit w
employment of h
claim, saying, "t
total loss you c
at the time of t
indemnity to hi
and you never c
what might have
adventure of th

* See analysis th
catch before the o

The result was reported by Sir Louis Mallet to Lord Entfield on April 15, 1871.

The following is an extract from that report (Brit. and For. State Papers, 1870-1, Vol. 61, pp. 591-607):

As regards the claims of the owners for loss of employment of ships over and above the claims for value of the ships, and of the masters and crews for loss of employment, the board are advised that they must be rejected as untenable.

The claims preferred may be said generally to include the values of the vessels, and of the cargoes which were on board, or were about to be put on board, compensation to the owners for having been forcibly deprived of their property, and compensation to the master and seamen for the loss of their employments (p. 600).

A further question seems to have been raised whether the owners are entitled to anything beyond the full value of the vessel and cargo, the *restitutio in integrum*, on the ground that if they had not been deprived of their vessels they might have continued for some months or years to carry on a prosperous trade and have realized large profits therefrom. One gentleman claims specifically on this ground the anticipated profits of several subsequent voyages, and all of them claim it indirectly in the extravagant amounts at which they have estimated the values of their vessels; but the claim, whether in the one shape or the other, seems to me to be quite inadmissible.

The principle which governs cases of this description was very clearly laid down by Dr. Lushington in the case of the *Columbus*, reported in 6 Notes of Cases (p. 671). It was the case of a *fishing vessel*,* which had been run down and utterly lost, and the owner, who was also the master, claimed, the smack having been his sole means of support, a sum of £89 for wages and victualing, and £75 for twelve months' average profit which would have accrued to him from the usual employment of his smack. But Dr. Lushington rejected the claim, saying, "I take the rule to be this: In the case of a total loss you calculate the value of the property destroyed at the time of the loss and pay it to the individual as a full indemnity to him for all that may have happened to him, and you never can, by possibility, enter into an examination of what might have been gained, or, on the other hand, lost by an adventure of this kind."

* See analysis this case *infra*, showing evidence of average profits of catch before the court on this question.

And the reason is obvious, for no one can say with certainty whether in any future adventure, for *which there is no express contract*, the shipowner will make a profit, nor what that profit will be. *If there is an express contract for the hire of the ship, you can no doubt estimate approximately the profits of the voyage, but if there is no such contract you can not do so, and the adventure, instead of giving a profit, may result in a heavy loss.*

In the case of the *Hiawatha* before the British and American Mixed Commission of May, 1871 (p. 91, Brit. Agent's Report), the same principle was affirmed in the case of claims for losses of profits and the failure to realize commissions on sales depending upon the safe arrival of the ship.

The case of the *Washington* before the Mixed Commission of 1853 was in every respect analogous to the present case.

Great Britain claimed jurisdiction over the Bay of Fundy as territorial waters. The *Washington* was seized 10 miles from shore. It was held that the waters were not territorial, and that the seizure of the *Washington* was made on the high seas. The ship was owned by American citizens, and was under the American flag.

It was therefore a case of seizure in principle precisely like the case here. She had been condemned by a British court, and with her equipment and stores sold under the order of the court. At the time of the seizure she was engaged in fishing, and she made claim for all damages, including, it is assumed, her probable catch and interest. As finally decided by the umpire, the claim was abated from \$4,121 as excessive, and the sum of \$3,000 was allowed.

While the ruling is not expressly made against prospective catch, it is clear that that item was not allowed.

Other

In the *Apolo* Story, delivering (1876):

This court on view opinion that the ship or cargo, can tion of damages.

When the vessel measure has been with interest upon pass. * * *

And it may be a complete indemnity in their to some commensurate

See also *Smith and Telegraph* 3 Dall., 333; *The Mayne* on Damages (1st American ed.) says:

In general, however, accompanied by malice, a fancied right, as to the actual pecuniary Phillips, 23 Wall.

And in *I Su*

The value of the element of damages and contract; and call for or justify such damages as adopted as the measure of the property, contract. In both cases of damages,

See the *Cit* which was a Wall, 75); *The*

Other authorities from the courts.

In the *Apollon* (9 Wheaton, 362), Mr. Justice Story, delivering the opinion of the court, said (p. 376):

This court on various occasions has expressed its decided opinion that the probable profits of a voyage, either upon ship or cargo, can not furnish any just basis for the computation of damages in cases of marine tort. * * *

When the vessel and cargo are lost or destroyed, the just measure has been deemed to be their actual value, together with interest upon the amount from the time of the trespass. * * *

And it may be truly said that if these rules do not furnish a complete indemnification in all cases they have so much certainty in their application * * * that they are entitled to some commendation upon principles of public policy.

See also *Smith v. Condrey*, 1 How., 28; *Vaughan and Telegraph*, 14 Wall., 258; *Del. Co. v. Arnold*, 3 Dall., 333; *The Anna Maria*, 2 Wheat., 327. Wood's *Mayne on Damages*, cited in the British argument (1st American Ed. from 3d English edition, p. 56) says:

In general, however, injuries to property, where unaccompanied by malice, and especially where they take place *under a fancied right*, are only visited with damages proportionate to the actual pecuniary loss sustained. (*Grand Tower Co. v. Phillips*, 23 Wall., 471; *Owen v. Routh*, 14 C. B., 327.)

And in *I Sutherland on Damages*, 173:

The value of the property constitutes the measure or an element of damages in a great variety of cases both of tort and contract; and where there are no such aggravations as call for or justify exemplary damages, in actions in which such damages are recoverable, the value is ascertained and adopted as the measure of compensation for being deprived of the property, the same in actions of tort as in actions upon contract. In both cases the value is the *legal and fixed* measure of damages, and not discretionary with the jury.

See the *City of Peking* (15 App. Cas. H. L., 438), which was a case of partial loss; *The Falcon* (19 Wall., 75); *The Atlas* (93 U. S., 302).

It results that the decisions of international courts, and of courts of both countries, are, without exception, in direct conflict with the position taken in the opposing argument, in every case where the ship of the claimant is lost to him by tort, either by destruction, capture, or the abandonment by the owner to condemnation proceedings, or to the captor, or in any other case of actual loss of the property. Cases of detention, and possibly of warnings, stand upon a different footing, and in such cases, both of contract and tort, damages in the nature of demurrage are always allowed, and in some cases where a loss by the detention can be shown *quoad quantum with certainty*, something more than the ordinary demurrage may be allowed; never even in such case on speculative evidence where there are contingencies or chances.*

It is now proposed to analyze the *cases cited in the British argument from pages 31 to 34*:

(1)

I Peake (p. 270): The action was like that of conspiracy to injure trade.

It was a willful and malicious tort, for which a recovery could have been had, as in the case of any trespass. As for instance, a conspiracy with overt act or, possibly more aptly, a malicious libel not actionable *per se* and not actionable without an averment of special damages.

The case is not in point, and besides its citation here is distinctly *non sequitur*, as the amount of damages, or whether profits were allowed, does not appear, the parties having agreed to refer the amount to arbitration.

* See page 116, this argument.

The Risolut

(a) It was was a suit for making repai

(b) The su eigners, and n

(c) It does ble catch was registrar and proofs and co tion of costs c

(d) The ca never treated to in any Bri was rendered (L. R. Dig. to

(e) Moreov 109)—an app of *The Risolu*

held that a s the owners cl loss of marke be considered James Hanne 105-118), wh consignee co market, as th ter of specul Lamb v. Wal burn, C. J., di be recovered building.

The last c ruled on this

(2)

The Risoluto (8 P. D., p. 110):

(a) It was not a case of loss of the vessel, but was a suit for damages for delay or detention while making repairs rendered necessary by the tort.

(b) The suit appears to have been between foreigners, and never to have been appealed.

(c) It does not appear that the point as to probable catch was made in the case when reported by the registrar and merchants, but the defendants went to proofs and contested, the point decided being a question of costs only.

(d) The case occurred in 1881; the decision was never treated as an authority or cited or referred to in any British or American case from the time it was rendered down to and including 1895, inclusive. (L. R. Dig. to 1895.)

(e) Moreover, in the case of *The Notting-Hill* (9 P. D., 109)—an appeal case decided afterwards—the case of *The Risoluto* is not referred to, and it was there held that a ship having been damaged by collision, the owners claiming among other things damages for loss of market, the consequence of delay, it could not be considered as an element of damage, affirming Sir James Hannen in the case of *The Parana* (2 P. D., 105–118), where it was held that for a delay the consignee could not recover damages for loss of market, as that element of damages involved a matter of speculation on contingencies. In the case of *Lamb v. Walker* (3 Q. B. D., 389) it was held (Cockburn, C. J., dissenting) that prospective damages could be recovered for removing the lateral support of a building.

The last case was distinctly and expressly overruled on this point under the universal ruling against

prospective damages in *Dailey v. Mitchell* (14 Q. B. D., 11 App., 127).

(f) This is not an authority as against the leading Fishing case involving directly the principle of average profits on future catch, decided by Dr. Lushington (*The Columbus*, 6 Notes of Cases, *supra*).

(3)

The Gleaner (3 Asp. Mar. Cas. N. S., 582), also reported in 38 L. T. (N. S., 650). This was an action brought against a trawl fishing smack, *The Gleaner*, by the owners of the drift-net smack *The Maud and Florence*, for collision. The claim was for the value of nets and gear and compensation for loss in fishing. The ship was not lost.

The report of the registrar allowed £72 for the earnings of the smack for four weeks—the season's fishing. The claim was not objected to, and the case was not in court on the point of allowance of prospective profits, but was reported to the court on the question of costs only. The case was never appealed.

(4)

The Argentino (14 App. Cas., p. 519): This was not a case of total loss. *The Argentino* was proceeding on a voyage to Sevastopol, and she had a contract providing that as soon as she discharged her cargo at Sevastopol she should proceed to Antwerp, and load for another voyage. By reason of the collision she was prevented from fulfilling the contract for the second voyage.

Lord Herschel announced to the lords his views, as follows:

It does not appear to me to be out of the ordinary course of things that a steamship while prosecuting her voyage should have secured employment for another adventure, and if at the time of collision the damaged vessel had obtained

such an engagement for another adventure appropriate to the sequence of such a voyage.

Where no such engagement was obtained by the owner had been secured on the usual course, the claim for damage, etc. (See a case of "Expense" by Dr. Lushington *supra*.)

Further consideration.

The case of *C. P. D.*, 280, for pain and train. He was the order for such damage in power might see fit the physical by a rule as of injuries to

The Fortuna omissions in which will be

The claim "there were two actually were handling of the entire. It further

such an engagement, the loss of the earnings on such an adventure appears to me to be the direct and natural consequence of such a collision.

* * * * *

Where no claim is made in respect of loss arising from the owner having been deprived of the earnings on the voyage which was in contemplation, *an engagement for which had been secured*, it would be right, and is no doubt the usual course, to award damages under the name of demurrage, etc. (See this very exception to the general rule, i. e., a case of "Express contract for the hire of the ship," noted by Dr. Lushington in the case of *The Columbus*, as quoted, *supra*.)

Further comment seems unnecessary.

(5)

The case of *Phillips v. London and N. W. R. R.* (5 C. P. D., 280) was an action for personal injuries and for pain and suffering, by a passenger on a railroad train. He was a surgeon in active practice, and it was the ordinary case, governed by its own rules, for such damages, including, of course, loss of earning power directly traceable to the accident, as a jury might see fit to give under the evidence. Cases for the physical injury of persons are, of course, governed by a rule as to damages entirely distinct from those of injuries to property or property rights.

(6)

The Fortune Bay cases: There are some unfortunate omissions in the statement of facts in this citation which will be supplied.

The claim was for \$120,000, and while, as stated, "there were but four vessels out of the fleet of twenty-two actually fishing," *it appeared that those four vessels were handling the seines in behalf of and for the benefit of the entire fleet of twenty-two.*

It further appeared, and was proved incontestably,

that in the seines *at the time of the tort*, and therefore in possession, there were sufficient fish to give a *full cargo to every one of the twenty-two vessels*; and that by the act of the tortfeasors, the property in fish so actually at the time in possession of the fleet was lost to them.

The claim, therefore, was not for prospective profits, but for property actually taken from the fleet.

There was no agreement or decision giving estimated profits or average profits, or prospective catch, or probable catch. The result was the payment of \$75,000 on the claim thus made for \$120,000. This authority is adverse to the British contention. There was absolute certainty as to amount on the evidence.

Of course none of the vessels were lost to the owners.

The statement in the British argument is compared with the record of the cases appearing in vol. 72, Brit. State Papers, 1880, 1881, particularly at pp. 1282, 1289, 1307, and with the following quoted from that record:

The evidence in this case shows that the catch which the United States fishing fleet on this occasion actually realized was exceptionally large, and would have supplied profitable cargoes for all of them (p. 1289).

Moreover, it was admitted in terms by Great Britain as a matter of fact that beyond any contingency or speculation if the American vessels had not been disturbed they would have filled every one of the vessels.

So that we must differ from the conclusion of the British argument here, on this citation, that the settlement by the payment of a lump sum "implied the consent of both nations in the principle involved in the claim for catch."

If the principle of prospective catch should ever

be conceded
fers a total
be no reason
only; his lo
and this the
est, which t
pensation g
can not be a

A momen
the theory
not be a ma
for its comm
owner, havin
be entitled t
as for instat
nuisance.

The rema
in support o
on cases lik
542), cases
special contr
ness, or gros
sidered but f
and ability
profound re
instructions
this High C

The gulf
ing here, as
permit of n
the very tex
latter, as wi
distinction.

It will be
tory or vind
gross neglig

be conceded at all in cases where the owner suffers a total loss of the earning medium, there would be no reason or logic in allowing him for one season only: his loss of earnings are certainly continuous, and this the law recognizes whenever it gives interest, which the books invariably speak of as the compensation given in lieu of prospective profits, which can not be allowed.

A moment's reflection will be convincing that if the theory of future profits is correct at all it can not be a matter of a season or a year, but must find for its commencement and end the principle that the owner, having lost the earning instrument, he should be entitled to what it would have earned him to date, as for instance in the case of tort for a continuing nuisance.

The remaining proposition of the British argument in support of the claim for prospective profits, resting on cases like that of *Allison v. Chandler* (11 Mich., 542), cases of personal injuries, cases of profits on special contract, and cases involving malice, wantonness, or gross negligence, would not be seriously considered but for the fact that counsel, for whose learning and ability there is entertained the most sincere and profound respect, have again so far yielded to their instructions as to set it down for the consideration of this High Commission.

The gulf is so wide between the proposition applying here, as heretofore discussed, and this one, as to permit of no contact or induction at any point, and the very text writers and cases cited to sustain the latter, as will be seen presently, point out the broad distinction.

It will be treated under the head of *damages punitive or vindictive in respect of wantonness, malice, or gross negligence*.*

* See p. 126, *infra*.

Compensation in respect of warnings.

It will be seen by the record that with the exception of schooners owned in whole or in part by American citizens, there are but two cases in which any substantial recovery can be had as for "warnings out," or as to which the question of damages is worthy of serious consideration.

In the other cases of warnings it appears by the evidence either that there was found to be no warning by the Paris Tribunal, or the warning so found was not heeded so far as to materially affect the voyage.

It is conceived that on principle, cases of warnings should be treated as are cases of marine tort resulting, not of course in loss of the *res* or any part of it, but in detention or interruption of the voyage, universally considered under the head of "Partial loss." In such cases the doctrine heretofore discussed, as has been seen, applies with equal force against prospective profits as such—the rule against contingencies being equally strong.

This distinction in the rule of damages in cases of partial loss, or detention from earning, is nowhere more clearly drawn than by Dr. Lushington in the case of the *Columbus*. (*Supra*, 3 W. Rob., p. 159.)

Sedgwick, in his work on Damages (Vol. 1, p. 257), after discussing the rule in cases of partial loss under the head "Cases of entire loss do not fall within the rule," says:

It is important to observe that actions brought for the immediate destruction of property do not involve any question of gain prevented. If payment is asked for destruction—that is, for the whole value of the property—it is upon the theory that the plaintiff's entire interest in the property seized at the time of the injury was replaced by a right to have the value of the property in money. Since, therefore, the plaintiff no longer has title to the property, he can no longer claim he might make a future gain from it, and his recovery is limited to the value of the property at the time and place of destruction, with interest.

And see (Swab. Ad. I.

In such cases States have judgments in cases between a country and damage or d

Williamson case of this k

The jury was to give damages necessarily incurred also for the use make the repa

By the use of due to the plaintiff run upon the usually engaged in cases of collision to the extent is obvious eno stating the proper measure the boat and of and, in respect in insurance ca The claim lies loss of the se repairs. That this loss would be apparent.

This question England, in the Lushington, and in party who had adequate compensation for the complete detention of the ship for the complete

In fixing the detention, the much as would the ship's expense

A case is reported in which the gro

And see Dr. Lushington in the case of the *Clyde* (Swab. Ad. R.).

In such cases the Supreme Court of the United States have adopted the rule of the English judgments in cases of partial loss, distinguishing always between a case of total loss and a case of partial damage or detention.

Williamson v. Barrett (13 Howard, 101) was a case of this kind, and the court, at page 110, says:

The jury was instructed if they found for the plaintiffs to give damages that would remunerate them for the loss necessarily incurred in raising the boat and repairing her, and also for the use of the boat during the time necessary to make the repairs and fit her for business.

By the use of the boat we understand what she would produce to the plaintiffs by the hiring or chartering of her to run upon the river in the business in which she had been usually engaged. The general rule in regulating damages in cases of collision is to allow the injured party an indemnity to the extent of the loss sustained. This general rule is obvious enough, but there is a good deal of difficulty in stating the grounds upon which to arrive, in all cases, at the proper measure of that indemnity. The expenses of raising the boat and of repairs may, of course, be readily ascertained, and, in respect of the repairs, no deduction is to be made, as in insurance cases, for the new materials in place of the old. The claim lies in estimating the damage sustained by the loss of the service of the vessel while she is undergoing repairs. That an allowance short of some compensation for this loss would fail to be an indemnity for the injury is apparent.

This question was directly before the court of admiralty in England, in the case of the *Gazelle*, decided by Dr. Lushington, and in deciding it the court observed: "That the party who had suffered the injury is clearly entitled to an adequate compensation for any loss he may sustain for the detention of the vessel during the period which is necessary for the completion of repairs, and furnishing the new articles."

In fixing the amount of the damages to be paid for the detention, the court allowed the gross freight, deducting so much as would in ordinary cases be disbursed on account of the ship's expenses in earning it.

A case is referred to, decided in the common law courts, in which the gross freight was allowed without deductions for

expenses, which was disapproved as inequitable and exceeding an adequate compensation, and the qualification we have stated laid down.

This rule may afford a very fair indemnity in cases where the repairs are completed within the period usually occupied in the voyage in which the freight is to be earned. But if a longer period is required, it obviously falls short of an adequate allowance. Neither will it apply where the vessel is not engaged in earning freight at the time. The principle, however, governing a court in adopting the freight, which the vessel was in the act of earning, as a just measure of compensation in the case, is one of general application. It looks to the capacity of the vessel to earn freight for the benefit of the owner, and consequent loss sustained while deprived of her services. In other words, to the amount she would earn him on hire.

It is true in that case a ship was engaged in earning freight at the time of the collision; and the loss, therefore, more fixed and certain than in a case where she is not at the time under a charter-party, and where her earnings must, in some measure, depend upon the contingency of obtaining for her employment. *If, however, we look to the demand in the market for vessels of the description that has been disabled, and to the price there which the owner could obtain or might have obtained for her hire, as the measure of compensation, all this uncertainty disappears.* If there is no demand for the employment, and of course no hire to be obtained, no compensation for the detention during the repairs will be allowed, as no loss would be sustained.

But if it can be shown that the vessel might have been chartered during the period of repairs, it is impossible to deny that the owner has not lost in consequence of the damage the amount which she might have thus earned.

The market price, therefore, of the hire of the vessel, applied as a test of the value of the services, will be, if not as certain as in a case where she is under charter party, at least so certain that for all practical purposes in the administration of justice no substantial distinction can be made. It can be ascertained as readily and with as much precision as the price of any good commodity in the market, and affords as clear a rule for estimating the damages sustained on account of the loss of her services as exists in the case of damage to any other description of personal property of which the party has been deprived.

In the case of the *Gazelle* they held the position that an allowance of freight afforded a full indemnity for the detention of the vessel while undergoing repairs. This would be so

as already stated. It would have been the same if it is certain that the vessel was laid down under charter-party. She was entitled to the freight for the period she was sustained for the repairs. It was necessary to lay down a new article of the charter-party at the time when the particular case was under consideration. It was not, however, a double case, for, that the rule was the correct one in all cases. There was no loss of the vessel, but a mere irreparable

The case of *The Clyde* is to be found in the foreign cases on the subject of total loss.

It may be seen in the *Clyde*, supra. Twiss as referee in *Twiss v. Twiss*, and says who received the property was

Dr. Lushington, true, but it is

The Betsey is a collision case, where the vessel was engaged in a collision, well, although the evidence to

No authority is induced to question the

Besides, this is a charge on the earning that was

Again a case tract.

as already stated, if they were made within the period she would have been engaged in earning it. If it were otherwise, it is certain that the indemnity allowed fell short of the rule laid down under which it was made, which was that the party was entitled to adequate compensation for any loss he might sustain for the detention of the vessel during the period which was necessary for the completion of the repairs and furnishing new articles. The allowance of freight she was earning at the time was but a mode of arriving at the loss in a particular case under the general rule thus broadly stated, and afforded, doubtless, full indemnity. We are of opinion, therefore, that the rule of damages laid down by the court below was the correct one, and is properly applicable in all similar cases. There was no question made in respect of the freight of the vessel, hence the general principle existing was applicable irrespective of this element as influencing the result.

The case of the *Gazelle* (2 W. Rob., 279) referred to in the foregoing opinion, is the leading English case on the subject of partial loss as distinguished from cases of total loss.

It may be observed in passing that in the case of the *Clyde*, supra (Swab.), Dr. Lushington quotes Dr. Twiss as referring to the above-cited case of the *Gazelle*, and saying, that a party was in a better situation who received only partial damage than one whose property was totally destroyed.

Dr. Lushington comments: "This is undoubtedly true, but it does not affect the principle."

The *Betsey Caines* (2 Hag., 29) was a case of collision, wherein the injured vessel was at the time engaged in salvage of a foreign ship, and Lord Stowell, although holding that there was not sufficient evidence to support the recovery, said:

No authority has been mentioned by which the court might be induced to consider itself excluded from considering a question of consequential damage. * * *

Besides, this is not a mere claim for consequential or probable charge only, if the smack was actually in the pursuit of earning that which it had been stipulated she should receive.*

*Again a case of certain damages in tort measured by an existing contract.

And see where the distinctions are drawn between total and partial loss, and yet where in every case mere prospective damages are excluded, the following:

Hadley v. Baxendale (9 Exchequer, Rep., 341), a case of special contract.

The Nottinghill (9 P. D., 109, *supra*); delay by collision resulting in the cancellation of a charter-party—the charterers having a right to cancel the charter-party for delays, had canceled it, and the court held the tortfeasor liable for the loss of the charter-party, the actual loss being capable of exact computation as between the amount to be paid for the charter and the amount actually earned by the ship in less profitable employment; but in that case it was held that there must be deductions from that sum for wear and tear, for the difference in the length of the voyages, and for the uncertainty incident to all sea voyages.

The Consett (5 P. D., 229) was a case of collision and loss of charter thereby. Of course the charter was in esse, and the loss capable of specific computation.

On the other hand, in the *Parana* (2 P. D., 118), which was a suit for loss on account of a delay of three months, the loss having been alleged on the fall in the price of cargo, and there having been no contract for the price, it was held that there could be no recovery for the loss of market.

The Clarence (3 W. Rob., 283) was a case of collision and detention. In this case it was attempted to prove the loss by evidence—as in this case—of average earnings of other vessels.

The court said:

The question which I have to determine is not the rate at which such a vessel as the *Clarence* might be hired out, but how much the company have actually lost by her detention whilst under repair. * * *

* * * In for what is being for the lately necessary amount. * *

The objection misapprehensions in assessment, low, as a matter of detention of circumstances as for example vessel would be proving her loss not been disclosed owners of the earned freight the case would have last advantage.

A well-reasoned authority, Law, 262-263.

The court

It must not be *ley v. Baxendale* mere speculation have been the defeated by the from which any means exist of able results, of the range of in relation to breach of a contract quantum of loss able to estimate such elements by the usual certainty.

For instance voyage, the gauge chance, are too compensation of which the the loss of the

* * * In order to entitle a party to be indemnified for what is termed in this court a consequential loss, being for the detention of his vessel, two things are absolutely necessary, actual loss and reasonable proof of the amount. * * *

The objection, it appears to me, has been founded upon a misapprehension of the principle upon which a court proceeds in assessing the amount of damage. It does not follow, *as a matter of necessity*, that anything is due for the detention of the vessel whilst under repair. Under some circumstances undoubtedly such a consequence will follow, as for example, where a fishing voyage is lost or where a vessel would have been beneficially employed. The onus of proving her loss rests with the plaintiff, and this onus has not been discharged upon the present occasion. Had the owners of the *Clarence* proved that the vessel would have earned freight and that such freight was lost by the collision, the case would have fallen within the principle to which I have last adverted.

A well-reasoned case on an exhaustive review of the authorities is *Wolcott et al. v. Mount* (36 N. J. Law, 262-271).

The court says:

It must not be supposed that under the principle of *Hadley v. Baxendale* (the special contract case in 9 Exc., supra) mere speculative profits, such as might be conjectured to have been the probable results of an adventure which was defeated by the breach of the contract sued on, the gains from which are entirely conjectural, with respect to which no means exist of ascertaining, even approximately, the probable results, can, under any circumstances, be brought within the range of damages recoverable. The cardinal principle in relation to the damages to be compensated for on the breach of a contract, that the plaintiff must establish the quantum of his loss, by evidence from which the jury will be able to estimate the extent of his injury, will exclude all such elements of injury as are incapable of being ascertained by the usual rules of evidence to a reasonable degree of certainty.

For instance, profits expected to be made from a whaling voyage, the gains from which depend in a great measure upon chance, are too purely conjectural to be capable of entering into compensation for the nonperformance of a contract by reason of which the adventure was defeated. For a similar reason, the loss of the value of a crop for which the seed had not

been sown, the yield from which, if planted, would depend upon the contingencies of weather and season, would be excluded as incapable of estimation with that degree of certainty which the law exacts in the proof of damages. But if the vessel is under charter, or engaged in a trade, the earnings of which can be ascertained by reference to the usual schedule of freights in the market, or if a crop has been sown on the ground prepared for cultivation, and the plaintiff's complaint is that because of the inferior quality of the seed a crop of less value is produced, by these circumstances the means would be furnished to enable the jury to make a proper estimation of the injury resulting from the loss of profits of this character.

The Maybey case, reported in 4 Blatchf., 439, was decided by Nelson, circuit judge, afterwards of the Supreme Bench of the United States. It was an appeal from the decree of the district court in a case of collision, partial damage, and detention.

Justice Nelson says:

The aggregate of the bills proved for repairs, etc., is \$1,608.63. The commissioner had reported damages to the amount of \$3,262.30. If interest be added, say for five years from the 1st of November, 1854, to the date of the report, October 19, 1859, upon the bills for repairs, etc., which interest is \$554.17, making the aggregate \$2,162.80, which, deducted from the amount reported, leaves a balance of \$1,099.50, which must have been allowed for the fourteen days' demurrage. I am not satisfied that the proofs bring the case upon the question of damages within the rule laid down in *Williamson v. Barrett* (13 Howard). A good deal of the testimony was general and turned upon mere opinion as to the probability of employment in the towing business, and the amount of the earnings if employed.

This kind of proof is too speculative and contingent to be a foundation for any rule of damages. It is, at best, a conjecture. The true question within the case of *Williamson v. Barrett* was what could the tug have been chartered for per day in the business of towing, *regard being had to the market price in the city of New York*. This would have brought the question down to some degree of certainty and afforded ground for an intelligible allowance or not of the loss which the libellant had actually sustained by the delay during the repairs. The facts, as left by the examination by the commissioner, are too uncertain to form a basis of any allowance

for the detention, mere opinion, can never lay subject. I sh \$1,099.50, and allowed on the

Fletcher v on the quest before the c syllabus of

In an action the contract, difference bet would have ea and the amou months later, lower, no que principle upon court refused

Evidence one voyage the vessel freight to be fixed and su

And see t in Boston R mond Railr Stillwell Ce N. Y. court similar ques opinion of

In an action sold, the vend for the deliv allowance of any contingen

It is regar worth the es when and wh

On the ot

for the detention. They are speculative and conjectural and mere opinion, to which no limit or rule can be applied, and it can never lay the foundation for the action of a court on this subject. I shall therefore strike out the item of demurrage, \$1,099.50, and confirm the decree for \$2,162.80; costs to be allowed on the appeal to neither party as against the other.

Fletcher v. Tayleur (17 C. B., 20) is sometimes cited on the question under discussion. The point was not before the court or raised, and the following is the syllabus of the case:

In an action for the noncompletion of a ship pursuant to the contract, the jury having given by way of damages the difference between the net freight which the vessel probably would have earned had she been ready at the time stipulated and the amount actually earned by her when delivered some months later, when freights in the particular trade were lower, *no question having been raised at the trial as to the principle upon which damages ought to have been assessed*, the court refused to disturb their verdict.

Evidence was merely introduced as to the value of one voyage which would have been undertaken had the vessel been delivered to the plaintiffs, and the freight to be earned was the market rate which was fixed and subject to absolute proof.

And see the same distinction and principle applied in Boston Railway v. O'Reilly (158 U. S., 334), Richmond Railroad v. Elliott (149 U. S., 266), Howard v. Stillwell Co. (139 U. S., 199), Griffin v. Colver (16 N. Y. court of appeals, 489). In the last case, on a similar question, Mr. Justice Selden, in delivering the opinion of the court, said:

In an action against the vendor for not delivering chattels sold, the vendee is allowed the market price for the day fixed for the delivery. *Although this, in both cases, amounts to an allowance of profits, yet, as those profits do not depend upon any contingency, recovery is permitted.*

It is regarded as certain that the goods would have been worth the established market price at the place on the day when and where they should have been delivered.

On the other hand, in cases of illegal capture, or of an

insurance on goods lost at sea, there can be no recovery for the probable loss of profits at the port of destination. The principal reason for the difference between those cases and that of failure to transport goods upon land is that, in the latter case, the time when the goods should have been delivered, and consequently that when the market price is to be taken, can be ascertained with reasonable certainty, while in the former the fluctuation of the markets and the contingencies affecting the length of the voyage render their calculation of profits speculative and unsafe.

This judgment is an exhaustive examination of the authorities applying to the present question.

Talcott v. Crippen (52 Mich., 633), decision by Cooley, *C. J.*

In *Brown v. Smith* (12 Cushing, 366), the court says:

The conjectural or possible profits of a whaling voyage can not be taken into consideration in estimating the damages.

On a full review of the authorities in cases of tort and contract, it can be said with confidence that there is not one that allows prospective profits or prospective catch as such, or permits any such rule, and profits as a measure of damages in cases of tort or contract have never been allowed as such, save where at the time of the tort or of the breach of contract evidence could be adduced of a certain character in the nature of a definite and certain amount to be realized if the breach or the delay from tort had not occurred.

What should be the rule then in case of warnings and the loss of the season's business?

It should be borne in mind that the compensation to be recovered can only be applied to the loss of the season in Bering Sea. There was no interruption with the sealing business in the North Pacific or in the Asian seas.

On the other hand, unlike the cases of detention

where business
be estimated,
age, for deter
Quoad the
good as ever

A fair char

But, on the
national law
interest or th
of a substant
be awarded
jects for the
vessel was ec
was prevente
by the Board
of the whale
bunal is a re

Story, *J.*,
which was a

I shall all
expenses of th
return to the

Substantia
the decision
sion of part

In this co
case of the
so much di
Geneva case
but were ca
sealing grou
for the pur
taken from
not only dr
sent on the

where business is lost, there is no wear and tear to be estimated, as the ship did not enter upon the voyage, for detention from which compensation is claimed.

Quoad the tort, every ship and equipment was as good as ever after the period of delay.

A fair charter value in such cases would be the rule.

But, on the whole, it is submitted that, as by international law between nations there is no rule as to interest or the rate of interest, something in the nature of a substantial return on the amount invested should be awarded to the owners of the ships of British subjects for the season's sealing voyage for which the vessel was equipped, and from realizing on which she was prevented by the warning. The principle adopted by the Board of Trade in their reports on the claim of the whalers in the case before the Geneva Tribunal is a reasonable one.*

Story, *J.*, in the case of the *Lively* (1 Gall., 315), which was a case of unlawful capture, said:

I shall allow demurrage, including therein wages and expenses of the ship from the time of capture until she could return to the place of capture.

Substantially the same principle was involved in the decisions that have been considered in the discussion of partial-loss cases.

In this connection it should be observed that in the case of the forty-one whalers as to which there was so much discussion as to prospective profits in the Geneva case, many of the whalers were not destroyed, but were captured and bonded, and driven from the sealing grounds. Others were utilized by the captors for the purpose of relieving their ships of captives taken from other vessels destroyed, and thus were not only driven from the sealing grounds, but were sent on the service of the captors.

* P. 97, *supra*.

The United States, in presenting the national claims subsequently known as "indirect claims" without estimates, as if going to a jury on a case involving willful and wanton tort, not requiring the proof of special damages, proceeded to ask the Tribunal of Arbitration "to estimate the amount which ought to be paid for the transfer of the American commercial marine to the British flag." (Papers, etc., Vol. I, p. 187, top.)

On the same theory they presented their claim for "the prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion," and so on. (Id., p. 185, bottom.)

They did present, however, as to claims for actual losses of citizens of the United States, specific claims of liquidated amount, *and did not ask, as to them, for the application of any rule of damages of a punitive or vindictive character such as are claimed here.*

They rested their claim for indirect damages of an unestimated character *for the Nation*, upon the theory, sustained, as they claimed to have demonstrated by the evidence, that the acts of the Confederate cruisers were *direct* acts of Great Britain of a hostile character, and to sustain that position by the record, *inter alia*, they quoted Mr. Cobden and others throughout their case to that effect. To illustrate by one instance of many, to sustain the charge of culpability and hostility, and therefore what would be called as between individuals, willful and malicious tort, they quoted from the speech of Mr. Cobden in the House of Commons, as follows:

You have been carrying on hostilities from these shores against the people of the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars, etc. (Id., p. 187 middle.)

The facts of record, unhappily, seemed to the counsel of the United States, such, as to require them to

urge the rule of damages from which the British argument here quotes; as, for instance, they state of the acts of Great Britain that "her acts of actual or constructive complicity with the Confederates gave to the United States the right of war against her as in similar circumstances she asserted against the Netherlands." (Id., vol. 3, 218.)

And again: "No such case on so large a scale has ever occurred except in the controversy between Great Britain and France in 1776, and then Great Britain declared war." (Id., p. 219.)

The British counter case truthfully says, in referring to the American claims of this description: "Claims like the present have rarely been made, and, as the British Government thinks, never conceded or recognized." (Id., p. 219.)

Such national claims, or so-called indirect claims, however, were, as has been seen, practically withdrawn by the United States on the intimation that Great Britain proposed to withdraw from the arbitration.

To conclude this reference to a most regrettable part of that controversy, made necessary owing to the citation in the opposing argument here of the American position at Geneva on the subject of damages, the opening statement of the British case before that tribunal is cited, where it speaks of the American case as one which "imputes to the British Government hostile motives," and states that "no reply to it whatever will be offered in the counter case." It goes on to say that the "British Government distinctly refuses to enter upon the discussion of these charges." (Id., vol. 2, p. 203.)

Now, it is clearly apparent that the measure of damages urged at Geneva had reference to this feature of that case which was eliminated by the arbitrators and by the consent of the United States.

It is also apparent in the whole record of the Geneva Arbitration that so far as claims for injuries to

citizens and damages more to with the

In this over a p pal laws that juris Governm jects or t est in nu its action tection o zens * injury to of sover can have circumst

It has by Grea and by t tion of t such gra be postp repeated matter o she has United

Exclud keeping o return on seizures, p have been has been a American observer:

B

citizens are concerned the rule as to aggravation of damages was not even suggested. That rule had no more to do with those cases there than it has to do with the cases here.

In this case the United States asserted jurisdiction over a piece of territory, and extended their municipal laws over it. In pursuance of the exercise of that jurisdiction and in the execution of those laws the Government did not discriminate against British subjects or the subjects of any other nation; but the greatest in number to suffer, and the greatest sufferers from its action were those persons who were under the protection of the United States and were their own citizens.* The incidental and comparatively insignificant injury to British subjects in this assertion of a right of sovereignty in respect of the seals in Bering Sea can hardly be characterized as "wanton" under such circumstances.

It has not been considered a wanton and offensive act by Great Britain, when by international negotiation and by treaty, that Government has treated the question of the jurisdiction of the United States, as one of such grave doubt that all other considerations should be postponed until it could be decided; and when by repeated conventions, treating on the subject, as a matter of right or wrong, irrespective of jurisdiction, she has admitted the rectitude of the position of the United States as to preventing pelagic sealing in

* Excluding the fleets of American citizens who obeyed the laws by keeping out of the sealing grounds, and were thus deprived of all return on their investment in the sealing business, the map of actual seizures, put in evidence by Great Britain, shows a large majority to have been of American vessels, who risked the penalty of the law. It has been asserted that the seal poachers in the Russian as well as in the American seas were largely Americans, and Kipling testifies as an observer:

"English they be and Japanees
That hang on the Brown Bear's flank;
And some be Scot, but the most, God wot,
And the biggest thieves be Yank."

Bering Sea and has joined with that Government in the effort to prevent it.

But apart even from the question of what may be called abstract moral right, which excludes in its affirmation the idea of wantonness, in respect of the charge of wantonness and evil intent to injure subjects of Great Britain, and in respect of the charge of affronting the flag and of invading the deck under it, these cases are in precision at every point, in counterpart of the case of *The Washington*, appearing in the proceedings of the Mixed Commission under the Convention of 1853. There was the assertion by Great Britain of exclusive jurisdiction over the Bay of Fundy, which is and was held to be a part of the high seas. There a British cruiser seized an American ship, of American registry, and flying the American flag, more than 10 miles from any coast; there the American ship was taken before an admiralty court and condemned, and by these acts lost to her owner. But there, instead of a board of arbitration, a British umpire decided against Great Britain. There was no charge of wantonness or malice on the part of the United States, but it was treated as the plain, everyday case of an act committed under claim or color of right—failing of sanction by judicial judgment—and was then treated as a simple tort.

In these conditions it is not seen how the illustration cited against the United States from Mayne applies, where he says:

If any other rule existed [the rule as to punitive damages in circumstances of aggravation] a man of large fortune might by a certain outlay purchase the right of being a public tormentor. He might copy the example of the young Roman noble mentioned by Gibbon who used to run along the Forum striking everyone he met upon the cheek, while a slave followed with a purse making a legal tender of the statutory shilling. (Brit. Argument, p. 21.)

The rule in it, as of a case

In general, h accompanied by malice, a *fancied right*, to the actual pe

Neither is Sutherland or a wrong is do tion is measur "Where there there is not the remote damag

The rule a author as foll

The value of element of dam and contract; a call for or just such damages a adopted as the of the property contract. In b measure of dam

The same r statement, as tainty in the a as unnatural the certainty tainty," in the the cases wh examined.

But past pro what may after 18 N. Y., 391.)

The citatio which the cas is taken as t

The rule in this case is, as the same author states it, as of a case of only "fancied" rights, thus:

Wood's
Mayne on
Damages, 1st
Am. Ed., from
3rd. Eng. Ed.,
p. 56.

In general, however, injuries to property, where unaccompanied by malice, and especially where they take place *under a fancied right*, are only visited with damages proportionate to the actual pecuniary loss sustained.

Neither is it seen how the rules apply, cited from Sutherland on Damages, that the motive with which a wrong is done affects the rule by which compensation is measured, or, as the same author is quoted, that "Where there is a fraud or other intentional wrong there is not the same strictness to exclude uncertain and remote damages," have anything to do with this case.

The rule actually applying here is stated by that author as follows (Vol. I, 173):

The value of the property constitutes the measure or an element of damages in a great variety of cases, both of tort and contract; and where there are no such aggravations as call for or justify exemplary damages in actions in which such damages are recoverable, the value is ascertained and adopted as the measure of compensation for being deprived of the property the same in actions of tort as in actions upon contract. In both cases the value is the legal and fixed measure of damages, and *not discretionary with the jury*.

The same rule will be found in Sedgwick; and his statement, as quoted in the opposing brief, as to certainty in the allowance of profits, "when not excluded as unnatural or remote, being wholly a question of the certainty of proof," refers, of course, to that "certainty," in the legal sense of the term, as defined by the cases which have been already exhaustively examined.

But past profits are in no case to be taken as a guide to what may afterwards be made. (*Masterton v. Mt. Vernon*, 18 N. Y., 391.)

The citations from Sedgwick and Sutherland, of which the case of *Allison v. Chandler* (11 Mich., 542) is taken as the text, appearing on pages 28, 29, and

30 of the British argument, are another instance of extremely inappropriate application.

In the case of *Allison v. Chandler*, if examined, will be found the same broad distinction, as in the text writers cited.

Thus in that case itself:

If a trespass was committed while the defendant was acting in good faith and under an honest belief that he had a legal right to do the act, the plaintiff is entitled to recover only actual damages and not damages of a punitive character.

The action was one of trespass to realty, and the acts of the defendant were of a peculiarly flagrant and outrageous nature. *Allison* had an old-established business, and *Chandler*, wanting the property, without any color of right whatever, as was found, practically tore down the building over his head and ruined his stock in trade.

It is usually spoken of through the books and reports of cases as the leading example of a "willful, wanton, reckless, and malicious trespass."

And so the Michigan cases follow it, but distinguish cases like the one here considered. (*Hyatt v. Admus*, 16 Mich., 180; *Batterson v. Chicago*, 49 Mich., 184; *Kreiter v. Nichols*, 28 Mich., 496.)

And, furthermore, it is held in the supreme court of Michigan—where *Allison v. Chandler* still holds its place—that the "wrong must be one wilfully done to the plaintiff, and not a wrong done without reference to him." (*Detroit v. McArthur*, 16 Mich., 447. And see 28 Mich., *supra*; *Gansley v. Perkins*, 30 Mich., 492; *Tenhopen v. Walker*, 96 Mich., 236.)

The case is like that of *Temperton v. Russell*—malicious injury to trade—(1893, 1 Q. B., 715), or if applied to marine torts, would be like the cases of malicious arrest of a ship, if it was the "result of bad faith or *crassa* negligence." (See cases cited, L. R. Dig., 1891–1895, column 803.)

The quotation
Demolombe re

(1) These a
(2) It need
ages under th
common law,
has any code v

LEGITIMATE

Hereafter, u
of the several
other evidence
deemed the h
compensation
testimony.

The tender
claimants agai
(Commissions,
authoritatively
be treated as

Under the
tion of 1871,
tunes of 800 p
the aggregate
against the
total awards o
gated \$1,929
presented to
aggregated \$
(Brit. Agent's
Agent's Rep.,

Under the
tween the Ur
000,000 of c
and of this ar
\$1,000,000.
Appendix.)

The quotations from Pothier, Laurent, and from Demolombe require but two comments:

- (1) These are not cases of fraud; and
- (2) It need hardly be said that the rule of damages under the Civil Law differs from that of the common law, and has no application here; neither has any code which has the Civil Law for a parent.

**LEGITIMATE COMPENSATION AND HEREIN OF
EXTRAVAGANT CLAIMS.**

Hereafter, under the proper heads, the testimony of the several owners of the respective vessels and the other evidence will be analyzed, so that what may be deemed the highest limit of fair valuations and fair compensation for injuries may be arrived at from the testimony.

The tendency to preposterous exaggeration by claimants against nations, and especially under Claims Commissions, has been universally observed, and is authoritatively set down in the books as a matter to be treated as a general rule in arriving at valuations.

Under the British and American Claims Convention of 1871, 55,000 printed pages (74 octavo volumes of 800 pages each) of testimony were taken, and the aggregate of claims presented by British subjects against the United States was \$96,000,000. The total awards of the Commission on those claims aggregated \$1,929,819. The claim of American citizens presented to that Commission against Great Britain aggregated \$1,000,000, of which none were allowed. (Brit. Agent's Rep., p. 5, App. 164; and see Am. Agent's Rep., vol. 6, Papers Treaty of Wash., pp. 4,8.)

Under the Convention of February 12, 1871, between the United States and Spain, upwards of \$30,000,000 of claims were presented and considered, and of this amount there was allowed something over \$1,000,000. (Am. Rep., "Opinions and Decisions," Appendix.)

Before the American and British Commission of 1853 claims aggregating some millions of dollars were presented by each country against the other, and the total award on them was, on account of British subjects, \$277,102.88, and on account of American citizens, \$329,734.16. (Am. Agent's Report—Introduction and Recapitulation.)

Under the Claims Convention between the United States and Mexico of July 4, 1868, the claims presented aggregated \$470,126,613.13, and the Commissioners allowed on them the sum of \$3,975,123.79.*

Brit. and For.
State Pa-
pers, 1874-
75, Vol. 66,
p. 402 *et seq.*

In April, 1871, the *Montijo*, an American ship, was captured and detained by the United States of Colombia. The United States preferred a claim for damages.

The matter was referred to arbitrators. The amount of the claim presented was \$94,000. The arbitrators disagreed, and the matter was then referred to the British minister as umpire. The report on the question of compensation made by the American arbitrator was affirmed by the umpire, cutting the compensation down to \$33,000.

On the claims for British ships destroyed in the Seine by Prussia, Great Britain referred the valuations to the lords of the privy council of trade for investigation and audit. The result was reported by the board of trade, who, after investigation, said of the claims preferred by the respective owners for the losses of their vessels that they were "far in excess of the most extravagant valuation that could be put upon them."

* In 1880 a British subject in Greece was injured, his family beaten, and "his whole property destroyed." His claim on the Greek Government, which Great Britain took up, was for £21,295 1s. 4d. Great Britain's method of intervention at first was by making reprisals. Greece protested, and Russia remonstrated. Through the mediation of France the controversy was adjusted by referring it to commissioners, who, on full investigation and appraisal of compensation, awarded the British subject £150. (Baker's Hall's, Vol. I, p. 472, note.)

And again:
absurd in the

The Registrar
a report, in w

In the present
that I should b
follow in court,
when he puts fo
done in these c

It is of inte
put upon ship
Trade and Ac

Ship

Alice
Ann
Jane Tindall
Jessamine
McLaren
Sally Gale
Syph
.....

The aggre
pounds; the
registrar of t

A similar
on the Ame
British case
they say:

It will at on
with the prac
impossible to
of shipowners
which they ar
habit of foun
market price

And again: "Those estimates are extravagant and absurd in the extreme."

The Registrar of the Court of Admiralty also made a report, in which he said:

In the present case the claims preferred are so outrageous that I should be inclined to adopt the rule which I always follow in court, namely, never to allow the claimant his costs when he puts forward a very extravagant claim, as has been done in these cases.

It is of interest to note the comparative valuations put upon ships by their owners, and by the Board of Trade and Admiralty for compensation, as follows:

Ships.	Age.	Tons.	Owners' claim.	Report of amount to be paid for ship.	Brit. and For. State Papers, Vol. 61, pp. 595-597.
			£	£	
Alice	20	160	2,400	700	
Ann	10	147	1,824	1,000	
Jane Tindall	21	159	1,800	700	
Jessamine	16	214	2,500	900	
McLaren	19	178	2,000	1,100	
Sally Gale	11	153	2,800	950	
Sylph	53	138	2,060	550	
			15,324	5,900	

The aggregate of claims presented was 20,270 pounds; the total allowed on the able report of the registrar of the Court of Admiralty was 6,899 pounds.

A similar report by the same authorities was made on the American claims and filed as a part of the British case before the arbitrators at Geneva, wherein they say:

It will at once be admitted by those who are at all familiar with the practice of the courts in maritime cases that it is impossible to place much reliance on the opinion or evidence of shipowners or merchants as to the value of property which they are seeking to recover. Shipowners are in the habit of founding their estimate not on what would be the market price of the vessel at the time of her loss, but on

Vol. 2, Papers relating to Treaty of Washington, p. 283.

the original cost price, and often take into account the amounts which they have expended at different times without making any proper deductions for the wear and tear and damage which has been sustained. Merchants are inclined to estimate the value of their goods by the profits which they had hoped to realize, without making any allowance for the risk of the market price falling or other contingencies on which those profits so often depend.

Chief Justice Cockburn, in his opinion on the claims, says:

The true character of these claims will be seen by comparing the amount of the demands now made for the prospective earnings of the whalers with the original list of claims forwarded by Mr. Seward to Mr. Adams in 1866 and communicated by the latter to the British Government. It thus appears that these claims have, without any assignable reason, increased to such an extent that they are now sometimes double, sometimes treble, and sometimes even more than five times what they were in the original list.

The following table exhibits some of the more striking cases.

Many other similar instances of extraordinary and arbitrary increase might be cited, but the above will suffice to show (what, indeed, a mere comparison of the claims themselves with the value and tonnage of the vessels but too clearly proves) that these demands are of a most extortionate character.

Vol. 4, Papers, Treaty of Wash. pp. 538-541.

I believe that the estimate of \$100 per ton for ship and outfit (whaling ship), proposed in the British Reports, is such as would be accepted as adequate by persons acquainted with the character and value of whaling vessels.

Using these few of many instances for illustration, attention is called to the evolution of the claims here from the time they first appeared and were first presented by Great Britain at Paris until they appear again in tabulated form in the argument here. This table does not include the costs in the Sayward case or "Additional claims," but simply the claims by the owners of the ships, showing the same description of

claims as the times.

Vessels.
Carolena
Thornton
Onward
Favourite
W. P. Sayward
Grace
Anna Beck
Dolphin
Alfred Adams
Ada
Triumph (little)
Juanita
Pathfinder, 1889
Triumph (big)
Black Diamond, ...
Lily
Ariel
Kate
Minnie
Pathfinder, 1890

In observ column of c be remarked presentation sie, in the lor not miscarri were to com how far the gone.

Equipmet ages on the other ships, and so on, amounts th the *Carolena* the most or convince th

claims as they have seen the light at three different times.

Vessels.	Claim as presented at Paris.	Claim as presented at Victoria.	Claim as now presented.	"Interest to be added."
Carolena	\$29,313.01	\$35,000.00	\$38,089.25	
Thornton	33,317.65	37,000.00	42,163.04	
Onward	29,769.71	34,000.00	45,570.10	
Favourite	7,000.00	7,000.00	8,202.00	
W. P. Sayward	31,055.00	35,000.00	47,984.96	
Grace	40,142.57	52,000.00	64,498.25	
Anna Beck	30,863.04	42,000.00	54,309.08	
Dolphin	43,836.50	55,000.00	68,897.71	
Alfred Adams	20,433.00	25,000.00	20,746.00	
Ada	28,528.00	42,000.00	61,003.07	
Triumph (little)	10,250.00	11,000.00	5,325.50	
Juanita	14,695.00	18,000.00	32,481.00	
Pathfinder, 1889	26,765.00	30,000.00	34,622.00	
Triumph (big)	19,674.00	25,000.00	40,950.00	
Black Diamond, 1889	17,185.00	23,000.00	41,901.00	
Lily	17,176.00	22,000.00	34,574.00	
Ariel	9,498.00	12,000.00	20,061.00	
Kate	11,210.00	14,000.00	22,384.00	
Minnie	16,460.00	22,000.00	40,407.00	
Pathfinder, 1890	2,000.00	2,000.00	3,700.00	

In observing this table and the amounts in the column of claims as presented at Victoria, it should be remarked in passing that if the general plan of presentation as pioneered by the alleged owner, Munsie, in the long hearing in the case of the *Carolena*, had not miscarried, within the observation of those who were to come after, no one would venture to estimate how far the preposterous exaggeration would have gone.

Equipment for business in general, for fishing voyages on the coast for other seasons, for supplies for other ships, stocks of goods for Indian trading stores, and so on, might have been added to the enormous amounts that are now shown; and, as in the case of the *Carolena*, vouchers might have been presented of the most orderly, most regular, and correct kind to convince the Commissioners that all these were used

in a prolonged season of two months in Bering Sea, for which the United States should pay. As it is, the results of that original plan, in the amounts of those laboriously honest vouchers for supplies and equipments, are not in the case, and even the first fruits of it, so carefully preserved and so faithfully sworn to by Munsie, the *Carolena* vouchers, are not brought forward, or their amounts longer included in the above "valuations."

The Commissioners have seen the claimants at Victoria and have observed their method of preparing and presenting their evidence. As a class, they were certainly no better than those referred to in the citations heretofore quoted, as being unreliable assessors of their own values and damages.

PERSONAL DAMAGES FOR FALSE IMPRISONMENT AND PAIN AND SUFFERING.

As to these, a table is submitted * showing their growth in amount. The testimony in support of them is hereinafter analyzed under the proper heads.

The Margotich story, which seems still to be given credence in the British argument, is a story of hardship, but it is not believed, after the investigation at Victoria, that the Commissioners will give it any credit.

P. 59, schedule of British claims at Paris.

The "sufferings and losses, navigating four vessels from Unalaska to Sitka," of Captain Warren, John Reilly, Captain Ferey, A. B. Laing, Louis Olsen, Michael Keefe, and Captain Petit, of the Warren-Cooper fleet, might possibly be considered irrespective of the actual American ownership of the vessels on which they sailed, with the exception of Warren and Laing, who had full knowledge that the national character of the ships on which they sailed was not British, but American. In any case, the amounts charged for the hardships all appear by the table presented.

* *Infra*, p. 335.

What the appear at th at that heari and Keefe v Alaska at a the authoriti their service

It did app were off on named, who Captain Wa

Among th are Guttorn all of the On Margotich a related by on cross-ex jail, not as and remain employem claim for w word of tes witness ju suffered.

The testi Oglivie cla argue the c Munsie cha charge aga

The pers which have capture at ages, whic rule of dar

It appe notably un sonal claim

What these sufferings and losses were did not appear at the hearing at Victoria, but it did appear at that hearing, for the first time, that Warren, Petit, and Keefe were occupied during their "detention" in Alaska at a very high rate of compensation, paid by the authorities of the United States Government, for their services under voluntary contract.

It did appear that while Captain Petit and Keefe were off on a voyage in that behalf, all the others named, who were not suffering like themselves and Captain Warren, had departed for home.

Among the prisoners of 1886, aside from Margotich, are Guttormsen, Monroe, Norman, Oglivie, and Black, all of the *Onward*, *Thornton*, and the *Carolena*. Setting Margotich aside, the tale of suffering of these men is related by the witness Dillon, who, as it turned out on cross-examination, actually remained about the jail, not as a prisoner, but as a deputy of the sheriff, and remained because he got better wages in that employment than in following the sea. There is no claim for wages in these personal claims, and not a word of testimony except that of Margotich and the witness just mentioned as to any actual damage suffered.

The testimony of Captain Raynor disposes of the Oglivie claim, and it is not thought necessary to argue the question as to whether the item which Mr. Munsie charges for cash lost through him is a proper charge against the United States.

The personal claims are of a character in any case which have never been allowed in a case of unlawful capture at sea. They are claims for punitive damages, which, as we have seen, can not furnish the rule of damages here.

It appears through all prior Commissions, and notably under the Commission of 1871, that all personal claims of masters or members of crews of ships

for imprisonment, hardships, or otherwise, were presented separately from the ships, by individuals, because a finding was required on "each" claim, as in this case. It follows, on this ground also, that no claims can be entertained that are not scheduled.

It was the act of a Government under color of right and claim of jurisdiction. Although the persons on the captured vessels were practically imprisoned in the *Alabama* cases, no such claims were even presented.

The case of the *Montijo*, *supra*, was particularly outrageous as against the ship and those upon her. In that case similar claims were presented by the United States in behalf of the officers and crew, and this is what the British minister, acting as umpire, decided on such claims:

But the undersigned, whilst deciding on the liability of the owners, does not see any necessity for indemnifying either Mr. John Schrubert, the captain, the engineer, or the petty officers and crew of the *Montijo*. No personal injury seems to have been suffered by any of these persons, and the inconvenience they experienced appears to have been small. In the case of the officers and crew probably there was none at all. The wages of all of these latter have doubtless been paid by the owners, so that it really must have been a matter of indifference to them whether they were sailing under the orders of Captain Saunders or of Señor Herrera.

As to Mr. John Schrubert, the undersigned can scarcely consider as a case of false imprisonment his retention on board of his own vessel. That he was not a free man is true, and that he suffered some inconvenience and possibly some loss of business by the act of which he complains is probably the case.

It is also possible that a court of law might consider him entitled to personal damages, but the undersigned believes that a Tribunal such as this is may lawfully exercise considerable discretion of its own, and decide rather on broad general principles than on a strict interpretation of written law. Such being his opinion, he concurs with the *Arbitrator of the United States* in striking out of the accounts presented by that Government the claims for personal damages of all the parties concerned.

(On the te
possible tha
as they rela
sented agai
allowed for
or without

Whateve
the ships o
appearing
the Paris
must be a
can not be
mere state
damnum el
unless the
that dama
penses can

In the ca
her subject
Seine, *sup*
employed

The chi
tort. (Ba

(Or in cu
Senora die

The Bri
the leadi
market du
That th

*The num
Argument for

CLAIMS FOR LEGAL SERVICES.

On the testimony at Victoria, it is hardly thought possible that these charges will be entertained, in so far as they relate to the preparation of claims to be presented against the Government, and nothing can be allowed for "legal and other expenses," on an estimate, or without proof of what they are.

Whatever charges were paid out for the defense of the ships of British owners in the courts of Alaska, appearing in the British schedule of claims before the Paris Tribunal, should be allowed; but there must be a certainty of proof as to them, and they can not be recovered without proof, and on their mere statement of the claim, analogous to the *ad damnum* clause in a declaration at common law—unless the theory of the British argument be correct, that damages on a general allegation of legal expenses can be given because of matter of aggravation.

In the case of the claim of Great Britain in behalf of her subjects in the ships destroyed by Prussia in the Seine, *supra*, the charge for legal services of lawyers employed to protect their interests was stricken out.

The claim is never allowed in such cases of marine tort. (*Baltimore*, 8 Wall., 377.)

Or in cases of wrongful capture at sea. (*Nuestra Señora de Regla*, 17 Wall., p. 31.)

THE VALUE OF SEAL SKINS.*

The British Argument cites the witness Theo. Lubbe, the leading purchaser of seal skins in the Victoria market during 1886, 1887, and 1889 to this effect:

That the market at Victoria was ruled by the London

* The number of seals seized on each vessel is accurately stated in the Argument for Great Britain.

sales. This being so, even if it be admitted that the London prices have anything to do with the measure of value, the tendency of the testimony as to that foreign market, in connection with the actual sales at Victoria is to the conclusion that the Victoria prices, so ruled, are still the tests of values in this case. The evidence discloses, however, that there was always a market at Victoria, and that the following were large buyers at that place during the three years:

1886: Theodore Lubbe, representing Martin Bates, Jr., & Co., of New York; Alaska Commercial Company; Bessinger & Co.; The Hudson Bay Company; Liebes & Co., of San Francisco; I. & A. Boscowitz.

1887: Theodore Lubbe, representing Martin Bates, Jr., & Co., of New York; J. Uhlman & Co., of New York; Liebes & Co., of San Francisco; Morris Moss, purchasing agent at Victoria; J. Boscowitz; Hudson Bay Company.

1889: Theodore Lubbe, representing Martin Bates Jr. & Co., of New York; Walter Borns; Jos. Uhlman, of New York; H. Liebes & Co., of San Francisco; Morris Moss, purchasing agent at Victoria; The Hudson Bay Company; J. and A. Boscowitz.

With this evidence of a market at Victoria and with the clear evidence of another and active market so near as San Francisco, it does not yet appear how the evidence of London sales could be competent. The claims originally set down in the schedule presented at Paris were in terms based on the Victoria market, with the exception of those of Mr. Munsie, who there sets out the London prices. As to the other claims, the foreign market is a new theory.

It is not necessary to again state the measure of recovery for the conversion of personal property. The cases heretofore carefully analyzed, universally hold to a test, that would exclude the London market

as a measure of cargo, in case has been in measure of The place of bly the port if not, the ne

In limine before claim thing given reason ever common law tive profits est shall be future profit that the law

But here as well as the theory for interest

Apart from more time cited in the as well as s to the subje

(a) The case of the case has be pears, as St

as a measure of value. Wherever presented, as to cargo, in cases of marine tort or contract, such a claim has been invariably ruled against. The time of the measure of value in such cases is the date of seizure. The *place* of the measure of value of cargo is invariably the port of departure, if a market exists there or, if not, the nearest market.

INTEREST.

In limine, it may be said that interest was never before claimed upon prospective profits, or upon anything given in lieu of prospective profits. The only reason ever given for the allowance of interest at common law, or by the Civil law, is, that as prospective profits or future earnings can not be given, interest shall be allowed to represent future earnings, or future profits, as the nearest approach to a just rule that the law can attain.

But here is presented a claim for future earnings as well as for the actual values, all, too, embracing the theory of punitive damages, and withal, a claim for interest superadded to the sum of all these.

Apart from this view of the matter, upon which no more time will be spent, a review of the authorities, cited in the opposing argument, seems to be required, as well as some reference to the principles applying to the subject.

(a) *The award of Sir Edward Thornton as umpire in the case of the United States against Brazil is cited.* This case has been analyzed in this argument, and it appears, as Sir Roundell Palmer states, that the decision

proceeded upon "ordinary judicial principles," and he recites the especially reckless and willful character of the wrong in this seizure committed by the military forces of Brazil, the ship being then under that nation's protection. He further shows (as does the record) that "the payment of the compensation and indemnity, though promptly claimed at the time, was for many years delayed." (See Vol. 3, Papers relating to the Treaty of Washington, pp. 566-567).

The "ordinary judicial principle" to which Sir Roundell Palmer adverted, demonstrates as he shows, that that case came within the rules where interest should be given in the way of damages as for a reckless or malicious tort, and also *where there has been "unreasonable delay"* in the payment of the compensation, when promptly claimed, and with an undisputed basis for it, set forth in the claim.

3 Id., p. 554.

The learned counsel concludes with Sedgwick, as follows:

3 Id., p. 552.

Where money is due without any definite time of payment, and there is no contract, express or implied, that interest shall be paid, the English rule, independent of statute, is that it can not be claimed.

And he quotes the rule of the New York judgments, as to *interest*, as follows:

Id.

In two actions against a master of a ship for nondelivery of goods, it was held in New York that the jury might give damages if the conduct of the defendant was improper, i. e., where fraud or gross misconduct could be imputed to him; but, it appearing that such was not the fact, it was not allowed; and that interest may be given by way of punishment for any illegal conversion or use of another's property.

Id., p. 552.

And the English rule, quoted from Sedgwick, where "It (interest) is imposed to punish negligence, tortious, or fraudulent conduct."

(b) *The Jay Treaty Case*, and the opinion of Sir John Nicholl is cited. Interest was given under that treaty

on the claim
tracted before
them [British
the United
that provision
by the manifest
of the claimant

As to the c
John Nichol
tained amount
of the claimant
certain basis
provided in
shall not be l
the manifest
the distinction

The case a
and among o
as stated by
Alexander C
of private cl
Mr. Adams i
the British G

(c) *The a
United States
Germany is c
that the Uni
case as part
ernment; bu
Britain, for
not agree up
supplementa*

(See Sir Rou
(d) *The ca
India Co., is
of internatio
The case*

on the claims which were for "*debts bona fide* contracted before the peace, still remaining owing to them [British subjects] by citizens or inhabitants of the United States;" but it was provided that even that provision should not extend to losses occasioned by the manifest *delay*, negligence, or willful omission of the claimants.

As to the claims in favor of the United States, Sir John Nicholl recommended interest on the ascertained amount of the "original cost" of the property of the claimants. Of course the original cost was a certain basis for the computation; but it is expressly provided in the treaty in that case that a recovery shall not be had for losses or damages occasioned by the manifest *delay*, etc., of the claimants. (See for the distinction, British argument, *id.*, p. 561 et seq.)

The case at Geneva radically differs from this case, and among other distinctions it is to be observed that, as stated by the British Arbitrator at Geneva, Sir Alexander Cockburn (quoted *supra*), the original list of private claims was "forwarded by Mr. Seward to Mr. Adams in 1866, and communicated by the latter to the British Government."

(c) *The argument of the Attorney-General of the United States (Wirt) under the finding of the Emperor of Germany is cited.* It is true that that advocate argued that the United States should have interest in that case as part of the indemnity claimed by that Government; but the case is not an authority for Great Britain, for the reason that the Commissioners did not agree upon a decision and the result was another supplementary convention between the two countries. (See Sir Roundell Palmer's review of the case, *supra*.)

(d) *The case in 1 P. Williams Rep., Elkins v. East India Co., is cited.* Was not decided on the principles of international law.

The case turned, too, upon the rule that he who

takes another's money or his property and turns it into money for his own use shall respond in interest. (See Sir Christopher Robinson and *Wirt*, infra.)

There is no question that international law does not sanction the allowance of interest. It can only be charged as "damages for withholding money which the party ought to pay and would not or could not." (1 Op. Atty. Gen., 268 (*Wirt*).

"Interest is not an integral part of a debt under the common law of England as accepted in the United States." (See 2 Wharton's Dig., sec. 246, and cases; *Gordon v. United States*, 7 Wall., 188.)

In the case of the *Montijo*, where the United States was a claimant against Colombia before the British Minister as umpire, 5 per cent interest was disallowed for the following reasons, quoted from the opinion of the umpire:

First. Because there is no settled rule as to the payment of interest on claims on countries or governments.

Secondly. Because it seems open to question whether interest should accrue during the progress of diplomatic negotiations, which are often protracted in their character.

Thirdly. *This reason applies with special force to negotiations which result in an arbitration or friendly arrangement.**

Fourthly. That whilst doing what he considers strict justice to the claimants by giving to them the full value of the use of their vessel during her detention, he desires to avoid any appearance of *punishing* the Colombian people at large for an act with which very few of them had anything to do, and which affected no Colombian interests beyond those of a few speculators in revolutions in Panama, (Vol. 66, Brit. and For. State Papers, 1874-75, pp. 420-421.)

Finally we cite Sir Christopher Robinson, who was the reporter of Lord Stowell (Sir W. Scott), the great English authority on public and private international law, on the question as to whether interest should be allowed to the United States on the award of the Emperor of Russia against Great Britain.

* On this point see *Amer. v. Longstreet* (10 Pa. St., 145).

The follow
British Gove

The question
importance an
apply the anal
independent of
regulated the
the particular
distinction wh
usually pay in

The obligati
ters of rare oc
as much on libe
as on the intrin
usually compe
siderable inter
They are also
consequences
intentional inj
vantage has a
cation is made
that, if interes
treaty, it shou
amount and p
expectation si
no such stipu
interest shall n

Interest is n
ers except by
to the Treaty o

The same
cinctly in the

The rules of
question, do n
circumstances
or of the posse
injury, proper
of the act, for
p. 564.)

In the Ge
wholly in th

The following is his opinion called for by the British Government on this subject:

The question of interest presents a question of considerable importance and delicacy, and to which it will be difficult to apply the analogy of rules derived from legal proceedings, independent of the political considerations, which may have regulated the conduct of the power making compensation in the particular case. In that view, it seems to be a reasonable distinction which is raised, that sovereign powers do not usually pay interest unless they stipulate so to do.

The obligations of Governments for civil injuries are matters of rare occurrence, and depend, in form and substance, as much on liberal concessions, or on reciprocal engagements, as on the intrinsic justice or equity of the claim. *They are usually compensations made on questions in doubt, after considerable intervals of time, by which interest is much enhanced.* They are also compensations for the acts of others; for the consequences of error or misunderstanding rather than of intentional injury, and for cases in which no profit or advantage has accrued to the party by whom such compensation is made. Considerations of this kind seem to require that, if interest is to be paid as part of the compensation by treaty, it should be matter of special arrangement as to amount and particulars; and the reasonableness of that expectation supports the distinction suggested, that, where no such stipulation is made between Sovereign Powers, interest shall not be considered as due.

Interest is not to be computed as between Sovereign Powers except by express stipulation. (Vol. 3, Papers Relating to the Treaty of Washington, p. 565.)

The same authority states the general rules succinctly in the following words:

The rules of law, as far as they may be applicable to this question, do not favor claims of interest, except under special circumstances, as in cases of agreement, expressed or implied, or of the possession or enjoyment of intermediate profits, or of injury, properly so termed, in respect to the tortious nature of the act, for which the compensation is to be made. (Id., p. 564.)

In the Geneva case certain interest was allowed, wholly in the discretion of the arbitrators, in lieu of

certain earnings, where it appeared that the American Government had presented the claims, which were passed upon by the arbitrators, immediately at the close of the war in 1866.

Interest seems to have been allowed at the lowest rate from the date of the filing of the claims, and not from the date of the capture of the ships.

In this case, as it has been shown in the Introduction to this argument, Great Britain expressly stated that the circumstances *were such that the claims could not be audited or presented*, and suggested that in lieu of auditing and presenting the claims at the time a Commission should be appointed.

This suggestion resulted in the Paris Arbitration, and the claims then for the first time appeared to the United States. Even then, owing to the questions of citizenship and others, no computation could be or was made, and then *consideration was by agreement*, in the stipulated findings, again postponed.

It results that under the law and precedents—

(1) Interest can not be allowed as a matter of right; and

(2) That under no circumstances can interest be allowed upon values from a date prior to the Paris award, or, as we submit, prior to the ascertainment of the claims by this Commission.

(3) That the rate of interest, if allowed at all, can not be fixed by a local rate or by a municipal rate.

THE "COSTS IN THE SAYWARD CASE."

The United States stand upon their motion to dismiss this claim on the ground that the Commissioners have no jurisdiction to consider it under the Convention,

for the full
conclusive:

The item,
admitted to
ment in and
Court of the
to the Feder
P. Sayward,
estimate \$7,
in behalf of
costs of the c
charge, made
is a claim for
\$1,800.

(1) There
by the Con
on account o
behalf Grea
tion from the
the Treaty
of the said T
tional claim
preamble he
The Unit
"person."

(2) This
of the said T
claim." It
ish claims,
Findings, w
Convention.
Paris Tribu
Findings na
the British c
6th of Septe
of the Treat

for the following reasons, any one of which is conclusive:

The item, without interest, is for \$62,817.12, admitted to be the expenses of the British Government in and about a vain application to the Supreme Court of the United States for a writ of prohibition to the Federal Court of Alaska in the case of the *W. P. Sayward*, a fishing schooner worth at the highest estimate \$7,000. It appears by the claim presented in behalf of the owners of the schooner that for the costs of the owners in litigation *entirely outside of this charge*, made in behalf of the British Government, there is a claim for legal expenses and "costs" amounting to \$1,800.

(1) There is nothing referred to this Commission by the Convention under Article I except "claims on account of injuries sustained by PERSONS in whose behalf Great Britain is entitled to claim compensation from the United States and arising by virtue of the Treaty aforesaid, the Award, and the Findings of the said Tribunal of Arbitration, as also the additional claims specified in the fifth paragraph of the preamble hereto."

The United Kingdom of Great Britain is not a "person."

(2) This is not a claim appearing in the "Findings of the said Tribunal of Arbitration" or an "Additional claim." It did not appear in the schedule of the British claims, pages 1 to 60, inclusive, specified in the Findings, which, as has been seen, are a part of this Convention. Those claims, which were before the Paris Tribunal, and specifically pointed out in the Findings named in the Convention, were set out in the British case, which was delivered on or before the 6th of September, 1892, in accordance with Article III of the Treaty of February 29, 1892.

Vol. I, American Reprint, p. 5.

Vol. 8, American reprint, p. 269.

There was nothing about this claim in that case, and nothing of the kind was presented until *three months thereafter*, when the British counter case was filed, disclosing at page 315 of that counter case this identical claim, which was its first attempted appearance before the Paris Tribunal.

Page 185, Vol. 30.

Now the British argument, here, states the following:

The facts are, therefore, that this particular claim was formulated and placed before the Paris Tribunal. It was not then objected to as a fair matter for consideration.

This again, is a striking error.

I Am. Reprint, pp. 18-19.

As appears by *Protocol 3* of the Paris Tribunal, on April 4, 1893, the United States promptly moved to strike *this item* out, on the ground that it was tendered for the first time in the counter case, and was not pertinent or relevant by way of reply.*

Vol. 11, American Reprint, p. 149.

On April 7, 1893, the American counsel, Mr. Phelps, called the motion up, and after some discussion between counsel and the arbitrators, it was postponed until April 12th.

Vol. I, Id., p. 22.

On the latter day (April 12th), as appears by *Protocol 7*, the consideration of the motion was postponed until such time "as shall hereafter be indicated by the Tribunal."

The argument on the main questions followed, and the next official act touching this claim, it having been designated by the British counsel as a matter of "small importance," was on May 31, 1893—*Protocol 30*—when the British Government, through Sir Charles Russell, submitted to the Arbitrators in writing the questions of fact and claims of Great Britain as to which a finding was asked, describing the claims as between pages 1 to 60 of the original British case only, *thus excluding and withdrawing this contested item*.

Vol. 11, Id., p. 149.

Vol. I, Id., p. 33.

* It was put in at the extreme end of the counter case.

It was the "before the

To conclude upon the p Charles Russell Findings of respect of w

only those original British claim by the "before" it.

The British says there w could be re and stated argument a out in the o upon as "b \$1,100.

They are a "person,"

(3) This ited by Art the fifth pa pressly excl is in terms, appearing "

(4) As t attached to

The title vention, ex the reasons mitted to th words "cos by Great I It need ha schedule ca

It was therefore never received by, and was never "before the Paris Tribunal."

To conclude the Paris history, the Tribunal itself, upon the proposition submitted in writing by Sir Charles Russell, on August 15th following, made the Findings of Fact, and found the claims before them, in respect of which Findings of Fact were required, to be, only those between pages 1 to 60 inclusive of the original British case, thus formally excluding this claim by the act of the Tribunal itself as one *not* "before" it. Vol. 1, pp. 80-81.

The British argument is again in error when it says there were no other costs for *The Sayward* which could be referred to. They have been referred to and stated as amounting to \$1,800 in the British argument at page 111, and were referred to and set out in the *original British schedule*, at page 19, passed upon as "before the Paris Tribunal," amounting to \$1,100.

They are there set down as claims on account of a "person," i. e., Cooper, the owner of the *Sayward*.

(3) This claim is not an "Additional claim" limited by Article I of this Convention as specified in the fifth paragraph of the preamble, and is as expressly excluded from reference under that head as it is in terms, as above shown, excluded from the class appearing "before the Paris Tribunal."

(4) As to the effect of the "Appendix" of claims attached to the Convention:

The title of that Appendix, as attached to the Convention, excludes the costs in the *Sayward* case for the reasons before stated. That title is "Claims submitted to the Tribunal of Arbitration at Paris." The words "costs in the *Sayward* case," as *now* construed by Great Britain, are interpolated under that title. It need hardly be argued that such an annex or schedule can not, in any case, control the Convention,

or add to the Convention a claim or a matter excluded by the provisions of the Convention itself. It has been seen that the costs in the *Sayward* case are so excluded. The rule of interpretation, as has been seen, is the same of a treaty as of a statute. The attachment of schedules to statutes is a common practice enough, but this is the rule as to them:

When in any manner repugnant to the provisions of the statute itself, the statute will control over the schedule. (See *Reg. v. Baines*, 12 (5?) Ad. & El., 227 (Tindal, C. J.); *Bartlett v. Gibbs*, 5 M. & G., 96; *Allen v. Flicker*, 10 Ad. & El., 640; *Regina v. Russell*, 13 Q. B., 237; *Deau v. Green*, L. R., 8 P. D., 79; *Clarke v. Grant*, L. R., 8 Exch., 252.)

(5) Even if the matter were not absolutely concluded on the question of jurisdiction, the counsel of the United States are unaware of any principle, by which, the legal expenses of a defeated party, incurred in a case wherein he has vainly invoked the wrong judicial jurisdiction for relief, can be allowed him. The rule is otherwise in a proper case, if the party has pursued the proper jurisdiction by appeal.

No reclamation can be made against a Government, upon judicial action in its courts, unless the proceeding complained of has been sanctioned by the court of last resort in the judicial system of the country complained of, or there is a *legal* excuse for the failure to appeal.

See cases directly in point under the American and British Claims Commission of 1871 from pp. 88 to 141, inclusive. (Vol. 6, papers, etc., Treaty of Washington.)

It is not true, as intimated in the British argument, that the application for writ of prohibition was a consent proceeding.

It was vigorously contested by the United States, and the *note verbale* of the Secretary of State, referred to in the British Argument, [April 8, 1888],* recognizes

* The prohibition proceeding was not instituted till January, 1891.

the fact that the *Sayward* reference to of years later litigation so ment, be incl
Finally, th
as has been s
Thomas H
within the fir

These are
Winifred, th

Preamble
states that th
them. The
under their

The case
Great Brita
Majesty's N

The hand
States auth
laws, by th
estops that
as if that ad
is universal
in foreign w
public ship
and speaks
sumably by
the State, u
(See case o

On this a
(See Hall
The poin

the fact that *appeal* proceedings had been taken in the *Sayward* case by Cooper, and, of course, has no reference to the application for a writ of prohibition of years later. The costs in the *Sayward* case in the litigation so "appealed" might, on amicable adjustment, be included in the convention, *and they were*.

Finally, the owner of the *Sayward*—the claimant—as has been seen, is a civil citizen of the United States. Thomas H Cooper is the sole owner and claimant within the findings of fact of the Paris Tribunal.

THE "ADDITIONAL CLAIMS."

These are for the owners of the *Wanderer*, the *Winifred*, the *Henrietta*, and the *Oscar and Hattie*.

Preamble 5, made a part of Article I, by reference, states that the United States admits no liability as to them. The facts regarding these cases are analyzed under their proper heads, *infra*.

The case of the *Winifred* is concluded against Great Britain by the action of Captain Parr, Her Majesty's Naval Commander in the Pacific.

The handing of the *Winifred* over to the United States authorities for prosecution under the revenue laws, by the commander of a British ship of war, estops that Government from making a claim as much as if that action had been taken by royal order. It is universally recognized that on the high seas or in foreign waters, the commander of a commissioned public ship of war represents the sovereignty itself, and speaks for it. Everything done by him is presumably by the direct authority and express order of the State, until such acts are expressly disavowed. (See case of "Trent.")

On this all writers on international law are agreed. (See Hall Int. Law, secs. 65-226.)

The point that the seizure was made outside of the

er ex-
self. It
ase are
s been
The
ommon
:
s of the
e. (See
; Bart-
Ad. &
reen, J.

y con-
nsel of
le, by
eurred
wrong
d him.
e party

minent,
roceed-
e court
country
failure

an and
88 to
Wash-

ument,
a con-

States,
ferred
gnizes

1891.

jurisdiction has nothing to rest upon. When the British ship *Winifred* came within the control of Her Majesty's ship of war, in the harbor of Unalaska, so far as any privilege from extra-territorial seizure was concerned, it was, as it could be, waived by the action of Great Britain acting through Commander Parr.

The additional claims are not governed by the findings of fact or the proceedings of the Paris Tribunal in any respect.

The international question of jurisdiction being out of the way, issue is taken with the position of the British counsel that the Commissioners under the present Convention can revise the finding of the court of Alaska on any juridical question. No international court can revise the judgment of the court of a nation, unless that judgment be by the court of last resort in its judicial system. This rule is established as one of universal application, to which there can be no exception, unless an appeal was prevented.

The owners of the *Winifred* can not enter this international court, without showing an unsuccessful appeal to the last appellate jurisdiction in the judicial system of the United States. (See vol. 6, Papers, etc., Washington Treaty, pp. 88-141), where the authorities are collected and the whole subject is exhaustively considered and is repeatedly passed upon.

In this case the point of jurisdiction was not made by the owner: he, properly acquiescing in the direction of the commander of H. M. S. *Melpomene*, defended on the merits and was condemned, and took no appeal. Moreover, for the *Winifred* to recover would be against public policy. Whatever purpose of excuse her distress might serve, for entering the sea, she was thereafter found actually engaged in taking seals in violation of the laws of both Great Britain and the United States, as is admitted on all sides.

It is the s
the facts may
able cause of
for the seizur
ernment und
be considere
adopted in t
probable cau
and Brit. Mix
ington Treat
cases cited.

2 Spinks, 23
before the A
etc., pp. 136

In this ca
Hattie was t
ing Sea. E
rectly repre
mene. That
into court, p
Her case th
States and
then, was in
Government

The cour
British Colu
demned the
that judgme
the United
seizure. N
facts of the
must rest w

The case
and *Hattie*,
treated und

THE OSCAR AND HATTIE CASE.

It is the settled rule in such cases that however the facts may turn out, if the captor acted on reasonable cause of suspicion, damages can not be allowed for the seizure. But in this case Her Majesty's Government under the *modus vivendi* set out what should be considered the probable cause. This order was adopted in the United States. On the question of probable cause we cite *The Isabella Thompson*, Am. and Brit. Mixed Com., Vol. 6, Papers Relating to Washington Treaty, p. 93; *Pacifique*, id., p. 97 et seq., and cases cited. And see *Dr. Lushington* in the *Leucade*, 2 Spinks, 236; *The Peterhoff*, 5 Wall, 28, which was before the Am. and Brit. Commission, vol. 6, papers, etc., pp. 136-139.

In this case, under the *modus vivendi*, the *Oscar and Hattie* was turned over to H. M. S. *Melpomene* in Ber-
ing Sea. It is not disputed that the facts were cor-
rectly represented to the commander of the *Melpo-*
mene. That officer, by taking the *Oscar and Hattie*
into court, passed his judgment upon probable cause.
Her case thus passed from the control of the United
States and the responsibility for prosecution, from
then, was in the hands of the officers of the British
Government.

The court of first hearing—the supreme court of
British Columbia—on a full hearing of the facts, con-
demned the ship. It is said now, that on reversal of
that judgment by the appellate court of Her Majesty,
the United States are liable as for damages for the
seizure. Neither Government would be liable on the
facts of the case, but in any case the responsibility
must rest with Great Britain.

The cases of the *Henrietta*, the *Wanderer*, the *Oscar*
and *Hattie*, and the *Winifred* are hereafter especially
treated under their respective heads.

The Pathfinder, in Neah Bay, No. 21.—This vessel was found in waters within the exclusive jurisdiction of the United States; she was boarded by the officers of customs, who had been advised that she had escaped from a previous seizure that had been made under the direction of the Treasury Department for alleged violation of the laws of the United States.

The revenue cutter, without delay, towed her to the nearest telegraph station, at Port Townsend, a six hours' run, and at once communicated with the Treasury Department at Washington, whereupon her release was immediately ordered by telegraph. She was detained but a part of one day, and the utmost possible expedition was used in obtaining authoritative instructions in regard to her case.

For this act Great Britain brings a claim for "seizure" and for damages for future catch.

It need not be argued that the general rule is that all foreign vessels, and for this purpose even ships of war, are liable to visitation from customs and quarantine officers of the nation whose jurisdiction they enter. (See Baker's *Halleck*, Vol. I, p. 217, notes 5 and 6; and see Hall, pp. 195–200–209.)

The United States have statutes, called "hovering acts," similar to those of Great Britain, and "officers of revenue cutters are authorized to search, examine, and remain on board all incoming vessels, domestic or foreign, when within 4 leagues, or 12 miles, of the coast." (Rev. Stat. U. S., secs. 2760–2867–2868; and see 9 Geo., II, chap. 35.) The English law was enacted in 1735; the American act in 1799.

The law as to a vessel, that has put into a foreign port in distress, is perfectly well settled. The privilege of such vessel, by the comity of nations, which in this respect has become international law, is admitted to the fullest extent; but the exemption does not go to the length of excluding reasonable quarantine or customs inspections. The detention for customs

inspection may be the character of the vessel, the privilege is claimed by the authorities are entitled to search on good faith of the property is of the ship for jurisdiction, with forfeiture of

There is no privilege be claimed is fairly doubtful the courts of

The burden which brought *Diana*, 7 Wall. Rob., 289.)

In any case asserted and of the jurisdiction nation; other

In this case once to the *Ross* this vessel, the "der" or other visiting office formally or in

On the law which is especially against the other of the proper office ship and, upon, detain inspections from the

The right and not on distress the

inspection may be for a sufficient time to ascertain the character of the ship, and in case the distress privilege is claimed, by protest or otherwise, the authorities are entitled to be reasonably satisfied of the good faith of such claim. The privilege itself, so far as property is concerned, goes only to the exemption of the ship from the execution of the laws of the jurisdiction, which, but for the privilege, might work forfeiture of ship or cargo.

There is no doubt whatever, either, that if the privilege be claimed, and the good faith of the claim is fairly doubted, the question may be brought before the courts of the nation of the port for trial.

The burden of proving the necessity or distress, which brought the ship in, is upon the ship. (*The Diana*, 7 Wall., 354; and see *The Copenhagen*, 1 C. Rob., 289.)

In any case, however, the privilege must be asserted and claimed promptly from the authorities of the jurisdiction in person, or by a consul of the ship's nation; otherwise it does not avail.

In this case, as the Commissioners will find on reference to the Record, the claim now set up on the part of this vessel, that she was in Neah Bay to "fix her rudder" or otherwise from distress, was never made to the visiting officers at any time, or brought to their attention formally or informally!

On the long Pacific coast of the United States, which is especially exposed at all times to offenses against the revenue laws, or, for that matter, on any other of their coasts washed by the high seas, the proper officers of the customs service may visit a ship and, upon reasonable suspicion as to its character, detain it for the necessary time to ask for instructions from their Government.

The right and the practice is one of self-protection, and not one that any nation can surrender. The distress theory, and the bill for damages, originated

with Munsie, like many other things, but all unwittingly, he did not fit his proofs to the law requiring that the distress privilege should be promptly claimed, in order to form even a pretense for his good hope of avails.

The Black Diamond, No. 5, and James Gaudin, No. 11.—These claims are submitted on the questions raised on the motions to dismiss them, found, respectively, at pages 16, fol. 60, and 37, fol. 50, of Appendix A (the pleadings) of the Record.

They are treated in the Argument of Great Britain as if submitted on the merits.

They are, however, submitted under stipulation found at page 17 (*id.*), wherein it is agreed, subject to the sanction of the Commissioners, that they may be proceeded with for the purpose of reporting facts and conclusions to the respective Governments.

Provided that the question of jurisdiction of the Commissioners under the Convention, in respect of said claims, shall remain undecided, but the Commissioners, in their discretion, may report their opinion on that question, counsel intending to prejudice in no way whatever their respective Governments in the above matters.

For the purposes of the stipulation, these claims are submitted for such action as the Commissioners may take; and, as bearing upon the positions taken in the motion to dismiss, attention is invited to those parts of this argument bearing upon the interpretation and scope of the Convention on the question of jurisdiction, and also to the facts as hereinafter analyzed.

The Carolena, Onward, and Thornton.—It is submitted as a matter of law on the facts hereinafter discussed in relation to the schooners *Carolena*, *Thornton*, and *Onward*, that the respective owners of those vessels treated the acts of seizure as constituting a total loss

as of the day
that connection
strict court of
from the Gov
can cut no fig
dence, the ac
they would n
after the seizu

The princ
That a tende
it appears at
been accepte
nequam non r

ROBERT L.
CHARLES

as of the date of the seizures. And moreover, in that connection, the failure of the officers of the district court of Alaska to act on the telegraphic orders from the Government for the release of these vessels can cut no figure on this question, as, under the evidence, the acts and conduct of the owners show that they would not have accepted a release at any time after the seizures.

The principle to be applied in such cases is this: That a tender is never necessary to be shown when it appears at the trial that the tender would not have been accepted if made. *Jus vanum non exigit; Jus nequam non requirit.*

DON M. DICKINSON.

ROBERT LANSING.

CHARLES B. WARREN.

—O—

APPENDIX I.

CONDENSED PROTOCOLS.

Correspondence preliminary to the negotiation of the treaty of Washington signed May 8, 1871.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, January 26, 1871.

SIR: In compliance with an instruction which I have received from Earl Granville, I have the honor to state that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government; shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's Government to tender it, and I can not doubt that in that case the result will not fail to

contribute to the
the two countries
the United States
have at heart.

I have the honor
your most obedient

Hon. HAMILTON

SIR: I have
note of January
with instructions
Government of
which they are
ened between
a friendly and
to between the
rights which
and Her Majesty
the fisheries
North America
which affect the
possessions; and
questions of a
licated nature
be thoroughly
to propose to
appointment
composed of
shall hold its
discuss the mat
arisen out of
the relations
sessions in N

I have laid
me to say that
appreciation
understanding
to the subject
the proposed
nizes the friend

contribute to the maintenance of the good relations between the two countries, which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,

Washington, January 30, 1871.

SIR: I have the honor to acknowledge the receipt of your note of January 26, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coast of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions; and further, that as the consideration of these questions would involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions that have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that, without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations and the sincere, substantial, and lasting friendship between the two Governments which, in common with Her Majesty's Government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments. He directs me to say that should Her Majesty's Government accept this view of the matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint High Commissioners on the part of the United States, to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practical moment, a just and amicable arrangement of all the questions which now unfortunately stand in the way of an entire and abiding friendship between the two nations.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, K. C. B., &c.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, February 1, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable

relations between
inform you the
opinion thus
States, the fri
appreciate.

I am now au
give Her Maje
commonly kno
submitted to t
by which Her
questions rela
should be dis
British subje
of acts commi
are similarly r
sions made us
mentioned no
convince me t
consider it o
between the t
be done away
my Governme
which they th
sion, and whic
labors will lea
two countries.

I have the h
your most obe

Hon. HAMI

SIR: I hav
note of the 18
authorized by
Majesty's Go
monly known
submitted to
by which Her
questions rela
ica should be
of British su

relations between the two Governments, I have the honor to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which, I beg you to believe, I fully appreciate.

I am now authorized by his lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission. The expressions made use of in the name of the President in your above-mentioned note, with regard to the "Alabama" claims, convince me that the Government of the United States will consider it of importance that these causes of disputes between the two countries should also, and at the same time, be done away with, and that you will enable me to convey to my Government the assent of the President to the addition which they thus propose to the duties of the High Commission, and which can not fail to make it more certain that its labors will lead to the removal of all differences between the two countries.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant.

EDWARD THORNTON.

Hon. HAMILTON FISH, &c.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, February 3, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama claims," were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising

out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama claims."

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects or of American citizens growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented by the Governments of the respective claimants at an early day, to be agreed upon by the Commissioners.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, K. C. B., &c.

Extract from Protocol XXXVI of conference between the High Commissioners on the part of the United States and the High Commissioners on the part of Great Britain.

WASHINGTON, May 4, 1871.

The High Commissioners having met, the protocol of the conference held on the 3d of May was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The statement prepared by the joint protocolists, in accordance with the request of the Joint High Commissioners at the last conference, was then read, as follows:

STATEMENTS.

ARTICLES I TO XI.

At the conference held on the 8th of March, the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the

United States
her colonies d
the United St
not desire to c
of the Alabam
or armed, or
tion of force i
operations of
the capture a
with their ear
the pursuit of
of a large pa
British flag, i
longation of t
cost of the wa
showed that C
observance of
for the acts o
claims for the
had thus far b
lions of dolla
to be greatly
sented; that
the pursuit of
of Governmen
amicable sett
losses, withou
cation on the
being made.

The Ameri
hoped that th
upon record
ernment for t
acts were no
the Joint Hig
should be pa
satisfaction o

The British
ernment cou
discharge to
her by the r
liable to ma
sioned by th
Commissione
Commissione
signed to cr
iron clads, h

United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; *that the history of the Alabama and other cruisers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that in the hope of an amicable settlement no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.*

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of international law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British

Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired at a great cost to the country the control of the Anglo-Chinese flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future, but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the "Alabama" claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of international law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the arbitrator, but that they would make

known to their commissioners on

At the res March 13, and considered the for which the An for the instru servance by t

At the close British Comm sideration of

At the conf sioners stated Government t not assent to of internation Alabama claim order to evinc tions between provision for between the arbitrator sh had undertak rules which t

That a neu gence to prev its jurisdiction to believe is power with w to prevent t intended to d ing been spe jurisdiction,

Secondly. make use of tions agains augmentation ment of men

Thirdly. T waters, and vent any vic

It being a tions should between the

It was als to him the rules, which

known to their Government the views of the American Commissioners on the subject.

At the respective conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the arbitrator and laid down for observance by the two Governments in future.

At the close of the conference of the 14th of March the British Commissioners reserved several questions for the consideration of their Government.

At the conference on the 5th of April the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of international law which were in force at the time when the Alabama claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the arbitrator should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, viz:

That a neutral government is bound first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports or waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries.

It was also settled that in deciding the matters submitted to him the arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as

applicable to the case, and by such principles of international law, not inconsistent therewith, as the arbitrator should determine to have been applicable to the case.

The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a tribunal of arbitration.

At the conferences on the 6th, 8th, 9th, 10th, and 12th of April the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the arbitrators.

The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels.

The American Commissioners accepted this expression of regret as very satisfactory to them, and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the conference on the 14th of April the treaty Articles I to XI were agreed to.

TESTIMONY

This is four
Boulton, Lan
in 1854 and
United State
in 1859, since
in the State
ject, never ha
America.

Warren, to
(Record, 940

Q. He is an

A. No.

Q. Lives in

A. Lives in

Q. How long

A. Well, he

Q. He has li

A. I think

Q. Now, in
law, is he not

A. Yes.

Q. He has

A. Yes.

Q. You pro
T. H. Cooper.

but not in the

A. San Fra

Q. How lon
is your brothe

APPENDIX II.

TESTIMONY BEARING ON RESIDENCE AND CITIZENSHIP.

Thomas H. Cooper.

This is found in his examination: He was born in Boulton, Lancashire, England; that he left England in 1854 and came to New York, and has lived in the United States ever since; that he went to California in 1859, since which time he has continuously resided in the State of California; that he is a British subject, never having taken out naturalization papers in America.

R., 1836, line 69.
R., 1837, lines 1 to 61.

Warren, testifying relative to Cooper's residence (Record, 940, 941), said:

Q. He is an American citizen, is he not?

A. No.

Q. Lives in San Francisco?

R., 940, line 67.

A. Lives in San Francisco.

Q. How long has Cooper lived in San Francisco?

A. Well, he has lived there a number of years.

Q. He has lived there about twenty-five years, has he not?

A. I think likely.

Q. Now, in regard to Mr. Cooper, he is your brother-in-law, is he not?

R., 951, line 24.

A. Yes.

Q. He has been living in San Francisco?

A. Yes.

Q. You produced the other day a power of attorney of T. H. Cooper. A similar question was asked in the Thornton, but not in these cases. Where does Cooper live?

R., 1267, line 65.

A. San Francisco.

Q. How long has he lived there, to your knowledge? He is your brother-in-law, is he not?

- A. Yes. I expect it must be getting close on thirty years.
 Q. Do you remember the year that he went there?
 A. No; I do not, exactly, only hearing him talk. I think it must have been pretty near thirty years ago since he went there.
 Q. Did you marry his sister, or he yours?
 A. I married his sister.
 Q. Did he live in San Francisco when you were married?
 A. Yes.
 Q. Now, I am going to find out how long ago you were married, Captain.
 A. 1873.
 Q. Was Cooper then living in San Francisco?
 A. Yes.
 Q. And had he been living there for some time?
 A. Yes; for several years.

Andrew J. Bechtel.

The affidavit of Andrew J. Bechtel, signed and sworn to in the city of Victoria, on the 6th day of July, 1894, was read into the Record on behalf of the United States:

R., 1902, line 20.

I, Andrew J. Bechtel, of the city of Victoria, in the Province of British Columbia, hotel keeper, make oath and say as follows:

1st. I was born in the State of Ohio, of the United States of America, and I am the brother of M. N. Bechtel, deceased.

R., 577, line 19; Ex. No. 4, U. S. claim No. 1, p. 49.

And a certified copy of the bill of sale conveying to Bechtel the *City of San Diego*, together with an affidavit made by Bechtel stating that he was a resident and citizen of the United States of America. The affidavit is as follows:

DISTRICT OF SAN FRANCISCO,
Port of San Francisco.

I, John A. Bechtel, of Auburn, in the county Placer and State of California, do swear, according to the best of my knowledge and belief, that the schooner called the *City of San Diego*, of San Francisco, in the State of California, is of burden 46 and $\frac{1}{100}$ tons, and was built at San Francisco, in the year one thousand eight hundred and eighty-one; that I am a citizen of the United States; that my present usual

place of residence, Placer, and State of California, sole owner of the schooner, and of any foreign property, trust, confidence, profits or issues.

Subscribed and sworn to before me on the 18th day of July, 1894 (incorruptly), was changed by me, Andrew J. Bechtel, of the City of Victoria, British Columbia:

Q. Where do you live?

A. In Victoria.

Q. How long have you lived there?

A. About thirty years.

Q. I believe you are a resident and citizen of the United States?

A. Yes.

Q. And have you ever been a resident and citizen of the United States?

A. Yes.

Q. And this is your usual place of residence?

A. Yes.

Q. What business do you follow?

A. In the service of the Government.

Q. How long have you been in the service of the Government?

A. I can't say.

Q. About how long?

A. About thirty years.

Q. What was your usual place of residence?

A. Hotel building.

Q. What was your usual business?

A. I have been a hotel keeper.

Q. You were a hotel keeper?

A. For about thirty years.

He was residing in Victoria, British Columbia, at the time of his deposition.

On cross-examination:

Q. Did you ever receive any money from the Government?

A. I had some money from the Government.

place of residence or abode is Auburn, in the county of Placer, and State of California; and I am the true and sole owner of the said schooner, and that no subject or citizen of any foreign power is, directly or indirectly, by way of trust, confidence, or otherwise, interested therein, or in the profits or issues thereof.

JOHN A. BECHTEL.

Subscribed and sworn to the 9th day of February, 1890 (incorrectly printed in the Record 1896, but was changed, by stipulation, in the Record, to 1890).

Page 577
line 58.

Andrew J. Bechtel was called on behalf of Great Britain :

Q. Where do you reside, Mr. Bechtel?

A. In Victoria.

Q. How long have you resided in Victoria?

A. About twenty-three years.

Q. I believe you are married and settled down here?

A. Yes.

Q. And have a family here?

A. Yes.

Q. And this has been your home for the last twenty-three years?

A. Yes.

Q. What business are you now in?

A. In the sealing business.

Q. How long have you been engaged in the sealing business—about how long?

A. I can't say exactly as to months—over three years.

Q. About three years, you mean?

A. About three years—longer.

Q. What was your business before that?

A. Hotel business.

Q. What was the name of the hotel?

A. I have kept different hotels.

Q. You were a hotel keeper in Victoria for how many years?

A. For about eighteen.

He was recalled, but no testimony was given relating to his residence or possessions in Victoria.

R., 206, line
66.

On cross-examination:

R., 150.

Q. Did you have any stores or buildings there from which you received rent?

A. I had some cottages.

R., 393, line 67. Bechtel was recalled for cross-examination, but no testimony was given bearing upon his residence in Victoria or elsewhere.

R., 399, line 31. Referring to the register of the *City of San Diego* at the port of San Francisco, the Commissioner on the part of the United States said: "That is not a mere declaration of citizenship, but it is an act of citizenship on his part."

R., 1569, line 14. William Munsie, on cross-examination:

Q. Then you bought the *San Diego* for him, did you?

A. Well, he really bought her, but it was left to us to do the business. I believe his boy was ill at the time, and he was living in California. His instructions to us were to buy the vessel for him.

R., 1899, line 50. The naturalization papers of Bechtel when he became a subject of Great Britain were filed as an exhibit and marked Exhibit No. 128, G. B. claim No. 1. Record, 1989, line 64. (Exhibit, p. 401.)

Oath of allegiance.

I, John Andrew Bechtel, better known as Andrew J. Bechtel, do swear that in the period of eighteen years preceding this date I have resided eighteen years in the Dominion of Canada with intention to settle therein, without having been during such eighteen years a stated resident of any foreign country. So help me God.

JOHN ANDREW BECHTEL.

Subscribed and sworn to the 7th day of April, 1892.

The certificate of naturalization recites in terms that Bechtel "has duly resided in Canada for a period of eighteen years." The United States claim Bechtel to have been half owner of *Carolena* at time of seizure August 1, 1886, half owner of *Pathfinder* at time of seizure, July 29, 1889, and half owner of *Pathfinder* at time of "seizure," March 29, 1890.

It is in evidence of the United States of December

On the 16th of December, 1892, not having come to the aid of him to be

On the 7th of December, 1892, affidavit in support of the United States that he resided

On the 8th of December, 1892, affidavit at Victoria, British Columbia, of the *Triumph*, United States

That I am a native-born citizen of the United States, registered in the

He made the following statement:

On the 20th of December, 1892, affidavit in support of the

I, the undersigned, being a resident in the Province of British Columbia, do hereby declare as follows:

I am a native-born citizen of the United States, registered in the Oath of Allegiance, December, 1879, I do hereby declare my Oath of Allegiance

On the 20th of December, 1892, made affidavit to obtain the citizenship of the United States said:

I, the undersigned, being a resident in the Province of British Columbia, do hereby declare as follows: I am a native-born citizen of the United States, registered in the Oath of Allegiance, December, 1879, I do hereby declare my Oath of Allegiance

Daniel McLean.

It is in evidence that he became a naturalized citizen of the United States of America on the 1st day of December, 1882. Ex. 12, U. S. C. No. 18. Ex., p. 269.

On the 16th of October, 1886, the United States R., 1947, line 40. not having consented, McLean took out papers declaring him to be a naturalized citizen of Great Britain.

On the 7th day of September, 1892, he made an affidavit in the city of San Francisco, in which he states that he was a naturalized American citizen and that he resided in San Francisco. R., 1821, line 50.

On the 8th day of August, 1889, he made an affidavit at Victoria, relating to the claim for the seizure of the *Triumph* on the 11th day of July, 1889, by the United States revenue cutter in Bering Sea.

That I am master and part owner of the British schooner *Triumph*, registered at the port of Victoria, British Columbia.

He makes no statement as to his residence.

On the 20th of October, Daniel McLean made an affidavit in which he states as follows: R., 1955, line 33.

I, the undersigned, Daniel McLean, of the city of Victoria, in the Province of British Columbia, Canada, master mariner, declare as follows:

I am a natural-born British subject, born at Sidney, Cape Breton, in the Province of Nova Scotia, and since I took the oath of allegiance to a foreign State—United States—November, 1879, I did, on the 16th day of October, 1886, take the oath of allegiance to Her Majesty.

On the 16th day of November, 1887, McLean made affidavit at the port of Halifax, Nova Scotia, to obtain the register of the *Triumph* in his name. He said:

I, the undersigned, Daniel McLean, of Victoria, British Columbia, declare as follows:

I am a natural-born British subject, born at Sydney, in the county of Cape Breton, and have never taken the oath of allegiance to any foreign State.

Ex. No. 5; U. Daniel McLean was owner of one-third of *Triumph*
S. C. No. 3; at time of seizure, July 11, 1889.
Ex. 76.

Alexander McLean.

He became a naturalized citizen of the United States by order of the circuit court of the United States, district of Massachusetts, on the 1st day of December, 1882.

R., 689.

He sailed out of the port of San Francisco on the *Mary Ellen* in the year 1883, and was engaged as master of the *Favourite* at Victoria in the year 1884.

R., 441, line
63.

There is no testimony in the Record that Alexander McLean ever owned any property, outside of vessel property, in the city of Victoria. He never had a permanent residence there.

Alexander McLean testified on cross-examination:

Q. And where did you go to then; did you live here?

A. I lived here (in Victoria) from 1884 until 1889, and being back and forward between here and San Francisco at times.

The ships in the claims in which McLean is interested were the *Onward*, seized on the 2d day of August, 1886, and the *Favourite*, warned from Bering Sea August 2, 1886.

Alexander Frank.

Ex. 10 U. S.
ENS. P. 207-
39.

Alexander Frank made an affidavit on the 1st day of February, 1888, in the city of Victoria, in which he said he was an "American subject."

Ex. 209, line
28.

G. G. Gwynn, his attorney, made affidavit on the 1st day of February, 1888, that he was informed and verily believed that Alexander Frank was an American subject.

Alexander

Q. You are a
A. I am, sir.

Frank swore
Black Diamond
Moss (which
was an Amer
The Record
ness in San
of the *Lily*
gust, 1889.

The witness

Q. In November
A. I believe
time. I went
or the early
months.

Q. You had

A. I was living

Q. Had you
San Francisco?

A. I became
1889 or 1890.

a new business

Q. And you

A. I have been

Q. And you

San Francisco

occasionally

A. I return

Q. Return

A. Oh, for

Q. Could you

business or st

Gutman & F

A. I could

The only
the domicile
printed on

Alexander Frank testified on this second:

R., 1994.

Q. You are an American citizen?

A. I am, sir.

Frank swore that at the time that the *Lily* and the *Black Diamond* were registered in the name of Morris Moss (which date is November 10, 1888), "that he was an American citizen." R., 2000, line 10.

The Record discloses the fact that Frank had business in San Francisco about the time of the seizure of the *Lily* and the *Black Diamond*, July and August, 1889. R., 1999, line 50.

The witness was asked:

Q. In November, 1888, were you a resident of Victoria? R., 1993, line 50.

A. I believe I was. I am not quite positive about the time. I went to San Francisco either the latter part of 1888 or the early part of 1889, and I stayed there for several months.

Q. You had a business in Victoria?

A. I was liquidating my business in Victoria.

Q. Had you started in the new business in San Francisco?

A. I became a partner in 1889—the 1st of January, I think, 1889 or 1890. I do not know the date exactly. It was not a new business, but an old-established business.

Q. And you have been at it ever since?

A. I have been at it ever since.

Q. And you can not fix the date when you left Victoria for San Francisco. I do not mean to say without returning occasionally here?

A. I returned off and on here for a number of years.

Q. Returned for how long?

A. Oh, for a week, or two weeks, or a month at times.

Q. Could you state approximately the date when this business or store which had been carried on in the name of Gutman & Frank was closed?

A. I could not.

The only other evidence in the Record bearing upon the domicile of Alexander Frank is in his affidavit, printed on page 210 of Exhibits, which was made on

the 1st day of November, 1887, at Victoria. He said:

For two years and upwards one Jacob Gutman had, until the date of his supposed death hereinafter mentioned, been in partnership with me in a trade or business carried on by us at Johnson street, in the said city of Victoria, trading under the name or style of Gutman & Frank, as merchants and Indian traders.

The vessels in which Alexander Frank is interested as a claimant are the *Alfred Adams*, seized on the 10th of July, 1887, and the *Black Diamond*, seized July 11, 1889, and the *Lily*, seized August 6, 1889.

UNCERT

The met
proposed in
none of the
tion of any
a sealing vo

The att
to the stat
Mary Ellen
gear are se
usual succe
deposition,

Sealing a v
are so many
another with
number. It
of the seal, an
along the coa
known vessel
the same nu
season I had

It is the
briefly revi
and point
conditions
of safe inve
of chance.

Sealing
1890, from
was necess
sels emplo
schooners

UNCERTAIN CHARACTER OF SEAL HUNTING.

The method for computing an estimated catch, proposed in the opposing Argument, takes into account none of the contingencies which prevent the application of any rule for calculating the probable results of a sealing voyage.

The attention of the High Commissioners is called to the statements of Daniel McLean, *the master of the Mary Ellen in 1886*, the operations of which in *that year* are selected by the claimants as showing the usual success of a sealing schooner. He says in his deposition, which appears in the Record:

Sealing a venture.—The conditions for a successful catch are so many that while one vessel may take a great many, another with equally as large a crew may secure only a small number. It requires experience, a careful study of the habits of the seal, and a thorough knowledge of their route of travel along the coast to Bering Sea to secure a good catch. I have known vessels to leave port on the same day that I did, with the same number of crew and boats, and at the end of the season I had about two skins to their one. R., 1822, line 3.

It is the purpose of this portion of the argument to briefly review the principal features of seal hunting and point out more in detail the contingencies and conditions obtaining which remove it from the field of safe investment and surround it with the elements of chance.

Sealing as carried on in the years from 1886 to 1890, from the ports of Victoria and San Francisco, was necessarily hazardous and uncertain. The vessels employed were usually small second-hand schooners ranging from 15 to 125 tons burthen,

though the ordinary size was between 50 and 100 tons.

R., 1090, lines
13, 68.

The dangers attendant upon the voyage of 1,500 miles to Bering Sea, which usually occupied from fourteen to twenty days, and those that surrounded the operations in the sea, together with the uncertainty of profit, never induced capital to invest largely in the industry. The perils of a Bering Sea cruise were recognized by insurers in an increase of the premium required for vessels clearing for Alaskan waters, while the speculative character of the occupation is shown by the class of vessels engaged in it, and also by the number of sealers who were employed upon a "lay;" that is, an allowance of a certain per cent of the number of skins secured in lieu of wages, the crew thus entering into the speculation of the owner.

These small schooners, leaving the port of Victoria in April, May, or June, made their way northward along the western coast of British Columbia and Alaska or by direct course across the ocean to Unimak Pass, the nearest entrance to Bering Sea. The vessels carried either white or Indian hunters, the majority having the latter, in the years from 1886 to 1889. The boats used by the whites each contained a hunter armed with a shotgun or rifle, or both, a "boat puller," and a "boat steerer," the latter acting in the capacity of another oarsman when not approaching a seal. When canoes were employed, each was manned by two Indians, one to paddle and the other to strike the animal with a casting spear. It is apparent that when searching for seals a boat had a great advantage over a canoe or a boat with but one oarsman, as it possessed twice the propelling power of the latter.

When the weather had become sufficiently modified, a vessel with white hunters lowered its boats,

which took
keeping a s
going 10 o
often lower
was seen, n
and skill.

Captain
to the prop
"That dep
All seals c
how to ap
see him a c
to get near
whether he
to be awak
to 100 yar
the animal
proached.
dled gaff c
to secure
outright, t
stances a d
eventually
the animal
ward. In
tage which
with but o

If the s
instead of
Instead of
canoes we
their oper
schooner.
area cove
much mor
ers were c
and it was

which took their course to the windward, the hunters keeping a sharp lookout for the animals, and sometimes going 10 or 15 miles in their search, for the boats are often lowered when no seals are in sight. When a seal was seen, much depended upon the hunter's experience and skill.

Captain McLean in his examination was asked as to the proper way of approaching a seal. He replied, "That depends on the action of the seal at the time. All seals do not act alike. Some hunters can tell how to approach the seal; they can tell, when they see him a certain distance off, whether they are going to get near to him and shoot him; tell by his actions whether he is asleep or awake." If the seal appeared to be awake, the hunter used his rifle at a range of 60 to 100 yards. The shotgun was generally used when the animal was asleep, and could be more nearly approached. If the shot was successful, the long-handled gaff carried in the boat was used in an endeavor to secure the rapidly sinking body. If not killed outright, the hunter continued firing, in some instances a dozen shots being fired at a "cripple," which eventually was lost. Through some peculiar instinct, the animal when wounded starts directly to the windward. In the pursuit of a crippled seal, the advantage which a boat with two "pullers" had over a canoe with but one is apparent.

If the schooner carried Indian hunters and canoes instead of boats, the method of hunting was different. Instead of always proceeding to the windward, the canoes went in different directions, seldom extending their operations over three or four miles from the schooner. It is first to be noted, therefore, that the area covered by a vessel manned with canoes was much more limited than when boats with white hunters were employed. As soon as a seal was sighted, and it was determined that he was asleep, the canoe,

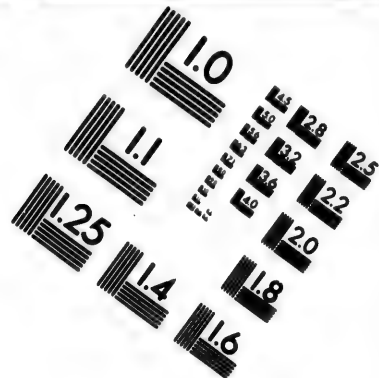
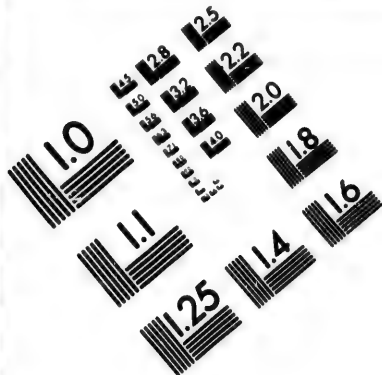
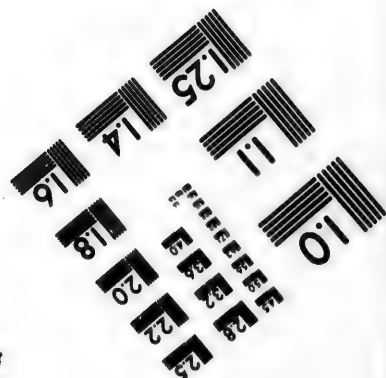
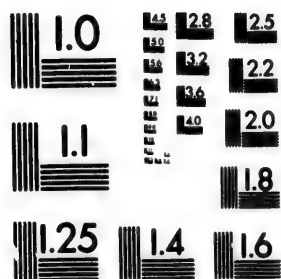


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14590
(716) 872-4303

1.8 2.0 2.2 2.5 2.8 3.2 3.6 4.0 4.5 5.0 5.6 6.3 7.1 8.0 9.0 10.0 11.2 12.5 14.0 16.0 18.0 20.0 22.5 25.0 28.0 31.5 36.0 40.0 45.0 50.0 56.0 63.0 71.0 80.0 90.0 100.0

10 11 12 13 14 15 16 17 18 19 20 22 25 28 31 36 40 45 50 56 63 71 80 90 100

if to the windward of the animal, circled about and attempted to approach him from the lee. If successful, the seal not awaking, the spear was cast when the boat was within 25 or 30 feet. If sufficiently skillful to strike the small, moving mark, the animal was drawn to the canoe by means of a cord attached to the spear head. If, however, the animal was awakened by the approach of the canoe, there was little probability of his being secured, as he would swim away at a rate of speed which precluded pursuit.

From the different way in which canoes and boats started out, it is apparent that boats would have an advantage, as the seal has an acute sense of smell, and can detect the presence of a hunter at a distance of three or four hundred yards. A canoe with Indian hunters was at a further disadvantage because the seals taken by it were necessarily "sleepers," as the use of the spear necessitated a close approach to insure a successful cast.

The Indians who came from tribes along the west coast of Vancouver Island were ignorant and superstitious. Several instances appear in the Record (which will be given more in detail hereafter) where a sealing voyage was brought to an abrupt end through some superstition or ignorant fancy of the Indian hunters arising from the sickness of one of their number, the loss of a canoe, a prolonged season of rough weather, the stubborn determination to return home, or some other cause which only the Indians themselves could explain.

Another peculiarity of the Indian hunters was that they were unwilling to start sealing when there was foggy weather. As fogs are so frequent in Bering Sea, it is apparent that this fear or superstition of the Indians must have tended to greatly modify their efficiency and to reduce their value as seal hunters when compared with white men.

If the co
is true, th
to a com
contingenc
schooner c
of approach
the tender
presence o
the proble
seals still

The for
white and
based on
however,
to the sel
miles awa

It is ev
sealing an
used that
determinin
There is,
the globe
more unfa

Fogs w
stated by
and favor
a fog so d
of the ve
cessful hu
canoes w
Record w
perhaps t
to go far
of fog, it
of the we
water rou
even for t

If the contention made on the part of Great Britain is true, that the locality of seals at sea was limited to a comparatively small area, another important contingency is that canoes and boats from another schooner caused the seals to become wild and difficult of approach. The variations which are suggested by the tendency of the animals to be disturbed by the presence of a number of hunters in the vicinity cause the problem of determining the chances of securing seals still more involved and difficult of solution.

The foregoing review of the methods adopted by white and Indian hunters, respectively, has been based on the assumption that they found seals. If, however, their search was unsuccessful, they returned to the schooner, and a new locality 20, 50, or 100 miles away was sought and the hunters again sent out.

It is evident from the hazard which obtained in sealing and the smallness of the boats and canoes used that the weather became an important factor in determining the success or failure of the voyage. There is, perhaps, no body of water on the face of the globe where the meteorological conditions are more unfavorable for fair weather than Bering Sea.

Fogs were of daily occurrence, and often, as is stated by Captain Meyer, the forenoon might be clear and favorable for hunting, while the afternoon brought a fog so dense that it was impossible to see the length of the vessel. These fogs not only prevented successful hunting, but because of them many boats and canoes were lost. Several instances appear in the Record where hunters were lost, and this danger was perhaps the chief cause why the Indian hunters feared to go far from the schooner. Besides the frequency of fog, it would appear that the prevailing condition of the weather in Bering Sea was such as to keep the water rough and dangerous for canoe and boat and even for the schooner. This fact often prevented the

R., 310, line 54.

Case of U. S. Am. Rep., vol. 2, p. 90. Counter Case of G. B. Am. Rep., vol. 8, p. 517.

R., 1731, line 38; see also log books in evidence.

R., 150, line 25; 615, line 3; 671, line 30.

hunters from going out and had a material effect upon their marksmanship.

John Cotsford, called as a witness by the United States, well expressed the difficulty of the hunter when the sea was in motion:

R., 380, line 67. Q. Do you think it nearly as difficult to shoot a seal asleep on the water as to shoot a duck flying with a rifle; which do you think it would be harder?

A. I think about the same on the water, because you have the double motion, but I think the bird would be the hardest of the two. At least, I am not so well accustomed to shoot birds as I am seals; therefore, I think birds would be the hardest of the two.

Again, upon the same subject, he says:

R., 381, line 52. If a man is not accustomed to a boat or canoe, it is a ticklish thing, and a man can't handle a gun very well.

The prevalence of stormy weather and changes of wind and fogs are among the principal contingencies which make seal hunting uncertain. It is but necessary to examine the evidence, where a detailed statement of the daily operations of different vessels are given, to show how frequent were the storms which swept across Bering Sea, although in many cases they were not general, but local in character. For example, the *Mary Ellen*, used as the typical vessel by Great Britain for the purpose of computing a "probable catch," was in Bering Sea in August, 1886, twenty-nine days, during which time she had fifteen days of weather so rough it was impossible to lower

R., 254, line 24. a boat. The *W. P. Sayward* during twenty-four days of the same month had but eleven in which her canoes could be lowered. The *Alfred Adams* in 1887

R., 1098, line 6. was in the Sea for thirty days, during which time she lowered but fourteen. The *Triumph* in 1888 was in the Sea for a period of forty-five days, during which time there were but seventeen when she was able to

R., 702, line 33. lower her canoes. The same vessel in 1890, with white hunters, who, not being influenced by fear of

togs, it is thought would have been in the but fifteen boats to be

There is induced on boats is lowered to live. It is how rough conditions are ing a mark If the weather

seals to sleep the difficulty while for In On the other region a long been opposed Again, if there were aroused were increased

Atmosphere to cause the their nature and perhaps aroused when ing. Hung seeking its leaping, and

From the becoming compelled to

The tomorrow taking matter season. It tain evidence

upon
fined
when
asleep
ich do
u have
ardest
o shoot
be the
a tick-
ges of
encies
neces-
state-
ls are
which
s they
exam-
el by
prob-
1886,
fifteen
lower
r days
h her
1887
ne she
was in
which
ble to
, with
ear of

fogs, it is to be presumed, lowered in weather which would have prevented Indian hunters from sealing, was in the Sea forty-two days, and in that time had but fifteen which were not too unfavorable for her boats to be used.

There is abundant testimony by witnesses produced on behalf of Great Britain that a canoe or boat is lowered whenever the weather is such that it can live. It is apparent how inclement the weather and how rough the sea north of the Aleutian chain. These conditions also limited the success of hunting by having a marked influence upon the seals themselves. If the weather was stormy, it was impossible for the seals to sleep, and if awake all witnesses agree that the difficulty of securing them was largely increased, while for Indian hunters it was practically impossible. On the other hand, after what may be termed for that region a long period of quiet weather, when there had been opportunity to sleep, the seals were restless. Again, if the rain began while the sea was quiet, they were aroused by it, and the difficulties of the hunters were increased.

Atmospheric changes tend to affect the seals and to cause them to be wakeful and alert. There are in their natures some peculiarities as yet unexplained, and perhaps unexplainable, which caused them to be aroused when the hunters expected to find them sleeping. Hunger is another cause of restlessness, for when seeking its food, the seal is in constant motion, diving, leaping, and forming a most difficult mark for a hunter.

From the 20th to the 25th of August the gales, becoming more frequent and increasing in intensity, compelled the cessation of all profitable seal hunting.

The tonnage of the schooner employed in seal-taking materially affected the determination of its season. It is to be presumed, and the Record contains evidence to sustain the presumption, that the

master of a small vessel, at the first signs of continued bad weather, ceased operations and started toward the Aleutian Passes.

Having summarized briefly the contingencies which particularly appertain to the hunters and the seals, it is proposed to examine the other conditions which tend to modify the results of a sealing voyage, and to place the question of its profitableness beyond legitimate speculation.

It is apparent, considering the class of men who were employed as seamen and hunters upon sealing vessels, and especially when the latter were Indians, ignorant and difficult of control, that the character and experience of the captain became an important factor in determining the success of the cruise. Mutinous, willful, and superstitious, an Indian crew demanded experienced men to manage them. The selection of hunters, either Indians or "whites," so important to the success of the voyage, depended largely upon the knowledge and experience of the master. In Bering Sea his sagacity in determining from observation whether it was probable or not that seals were sufficiently abundant in the vicinity to warrant the boats or canoes being lowered, was important in determining the number of the vessel's catch.

Another modification which affected the results obtained was "luck." That there is any certainty of finding seals in sufficient number to insure a profitable voyage, or any locality where seals may be always found, is denied by the United States, and has been discussed in that portion of this argument which deals with the so-called "sealing grounds."

Having considered the conditions and chances which make uncertain the success of a sealing voyage in Bering Sea, it is proposed to refer to the evidence relied upon for the statements made, classifying the testimony as far as possible under the

heads into w

The witn
E. Raynor,
half of the
der, of the U
evidence so
deemed adv
merely ann

The exam
ject is as fol

Q. Will yo
what is the
they running

A. Mostly
Q. Do you
ning seals—s

A. They k

Q. What a

A. There a

Q. I suppo

so they can l
A. Yes; so
being shot.

Q. Even a

A. Yes, si

Q. And if

which you m

A. Yes, si

they are ver

Q. That is

A. Very r

Q. Now su

sea at the

does it follo

will get the

A. No, si

Q. Do yo

scent of you

the seals?

A. Oh, y

Q. How f

experience?

A. They

see.

heads into which the subject naturally divides itself.

The witnesses Capt. Alexander McLean, Charles E. Raynor, and E. P. Miner, witnesses sworn on behalf of the United States, together with Mr. Alexander, of the United States Fish Commission, have given evidence so complete and comprehensive that it is deemed advisable to insert their statements as a whole, merely annotating the testimony.

The examination of Captain McLean upon this subject is as follows:

Q. Will you please tell us, as to the large catches of seals, R., 422, line 17, what is the condition of seals in these large catches; are they running or asleep? Condition of seals.

A. Mostly asleep.

Q. Do you know of any large catches being made of running seals—seals awake, we will say?

A. They kill a good many seal that are awake.

Q. What are the chances of losing an awakened seal?

A. There are a good many chances.

Q. I suppose a sleeping seal you come up upon very close, so they can be gaffed before sinking?

A. Yes; sometimes, and sometimes they get away after being shot. Wounded seals.

Q. Even a sleeping seal?

A. Yes, sir.

Q. And if the seals are awake, is the distance longer from which you must shoot?

A. Yes, sir; but sometimes you get a chance shot when they are very close to the boat.

Q. That is rather exceptional, is it not?

A. Very rare.

Q. Now suppose there are an abundance of seals in the sea at the place where you are, in your ship or schooner, does it follow that merely because the seals are there you will get them?

A. No, sir.

Q. Do you know in the matter of sealing whether the scent of your approach has anything to do with awakening the seals? Difficulty of approach.

A. Oh, yes.

Q. How far will they scent the approach of a man, in your experience?

A. They can scent a man or a boat further than they can see.

- Direction of the wind. Q. So that in approaching does the direction of the wind have anything to do with it?
A. Yes, sir.
Q. And how do you approach, when you can do it, in hunting for seals?
A. Generally approach from the leeward. If they approach from the windward sometimes they have to take chances.
- Chance of escape. Q. What is the effect, if they note the approach of man, upon the seal herd?
A. They will wake and leave.
Q. How fast will a seal make way to escape?
A. Well, it is pretty hard to say. They can travel fast for a short distance.
Q. And what average rate will they keep up?
A. Well, if they want to, they can go faster than a boat.
Q. And keep it up all day?
A. Not all day; no, sir.
Q. Their food supply is fish, is it not?
A. Yes, sir.
Q. Do you find fish in their stomachs?
A. Yes, sir.
Q. And what sort of fish?
A. Well, there is salmon and different kinds of small.
Q. They catch them in the Sea?
A. Yes, sir.
- Proximity of other vessels. Q. Now, the passing of other boats, and the use of guns, what effect does that have upon the school, if you find them?
A. If there is much shooting going on it makes them wilder.
Q. If another ship has passed over or shooting is going on they are awakened?
A. Yes, sir; if vessels are around they get wild.
Q. If they get wild can you get them?
A. Some, but not as many as if they had not been frightened.
- Chance of escape. Q. And I think you have already stated that where they are already awakened, and shot at a distance, there is danger of losing them?
A. Yes, sir; sometimes they get away from new men after being shot.
Q. And they will sink?
A. Well, they get away, and probably they may die afterwards.
- Rain. Q. What effect has rain upon the seals when you find where they are—heavy rain?
A. Well, heavy rain disturbs them; it depends on the

UN
weather that the
fine weather, it
well. If it had
pretty well.
Q. Does the
ance of a few, t
A. Well, tha
Q. Although
ing game on la
man in hunting
he gets when h
A. Yes.
Q. In what v
A. In the w
Q. Give the
A. All seals
has got to ha
ably three or
approach a sea
Q. And wha
approach a sea
A. That dep
seals don't act
the seal; they
off whether th
tell by his act
Q. So that
A. Yes.
Q. And of c
run the danger
A. Depend
you may get l
Q. Now, wh
the weather h
in the sea?
A. Well, if
rested pretty
the seals get
Q. The com
A. Yes, sir
Q. That is
A. Yes, sir
Q. And wh
before a storm
turbid?
A. Well, h
Q. Has th
to do with th

weather that they had before the rain came. If it has been fine weather, it will disturb them more; they will not rest so well. If it had been blowing before the rain they will sleep pretty well.

Q. Does the awakening of a few of the seals, the disturbance of a few, tend to awaken the others?

Proximity of other seals.

A. Well, that depends on the distance they are apart.

Q. Although a man may be a good shot at a mark, or shooting game on land, does the question of the experience of a man in hunting seals have anything to do with the number he gets when he finds seals?

Experience of hunter.

A. Yes.

Q. In what way?

A. In the way he approaches a seal before he shoots him.

Q. Give the Commissioners some idea of the way.

A. All seals don't act alike; some act different. A man has got to have considerable experience. It takes probably three or four months before he understands how to approach a seal properly.

Q. And what is the proper way, from your experience, to approach a seal?

A. That depends on the action of the seal at the time; all seals don't act alike. Some hunters can tell how to approach the seal; they can tell when they see him a certain distance off whether they are going to get near to him to shoot him; tell by his actions whether he is asleep or awake.

Q. So that determines the distance you will go near him?

A. Yes.

Q. And of course if you shoot him at a long distance you run the danger of losing him entirely?

Shooting distance.

A. Depends on how you shoot him. If he is badly wounded, you may get him.

Q. Now, when you are where the seals are, what effect does the weather have upon the seals, even if your boats will live in the sea?

Weather.

A. Well, if it had been fine weather and the seals were rested pretty well, and if there was bad weather approaching the seals get restless.

Q. The coming storm makes them restless?

A. Yes, sir.

Q. That is a modification of your chances to get seals?

A. Yes, sir.

Q. And what is the habit of the seal when he becomes wild before a storm; how does he appear differently when not disturbed?

A. Well, he moves.

Q. Has the experience of the captain of a vessel anything to do with the size of the catch for the season?

Experience of captain.

A. That is very hard to say.

Q. The experience of the captain in sealing?

A. I do not wish to state that.

Q. Is that because of your modesty?

A. No; I have been at sea a good deal—

Q. But I would like to know. Let me see; has the captain's judgment, because of his experience in seal hunting, anything to do with the way the vessel should approach the seal herd?

A. It has; he will have the vessel properly equipped and a good crew of men aboard.

Q. Has the selection of the crew anything to do with it?

A. It has a great deal.

Captain Raynor's testimony is as follows:

R., 524, line
65.

Q. What part of the sea did you hunt in in these various years?

A. No particular part; wherever I found seals.

Q. Did you go sometimes to the westward of the Pribilof Islands?

A. Yes; sometimes to the westward and sometimes to the eastward.

Q. To the north?

A. No; to the northeast end, not to the north exactly.

Q. And to the south?

A. Yes.

Chance in
finding
seals.

Q. From your experience in the sea, will you state whether you did find, in 1887-88, that the seals were to be found in the same place that you had found them in 1886?

A. No, sir; they were not; I never found successive years that I found seals in the same place.

Q. In looking for seals out there you have to take your vessel around various parts of the sea to come across a bunch of seals?

A. Yes.

Condition of
seals.

Q. You do not hunt seals in herds, do you? They are found in small bunches, are they not?

A. Mostly; I found them by two or three at a time.

Q. There is no such thing as running across thousands of seals and being able to kill any number of them in a short time?

A. No, sir; I never found it so.

Q. Seals are hunted individually more than collectively, are they not?

A. Yes, sir.

Proximity of
other seals.

Q. And they are found in bunches of two and three and of bunches of ten and eleven together?

A. Sometimes
Q. But they are
them?

A. They have
when in herds.

Q. When seal
and, of course, he

A. Yes, sir.

Q. The major
they?

A. Yes, sir.

Q. Now, to en
the conditions
be killed?

A. Well, the s
winds or anythi
well; and in a s
them.

Q. Do they s

A. If you ge
a long distance.

Q. For that r
the lee side?

A. Yes; from
the seal to the

Q. What oth
hunting?

A. Well, a g
to get at the se

Q. Does the
with it?

A. Yes, sir.

Q. Explain t
modification of

A. Well, the
and, after he s

Q. Has the m
anything to do

A. Yes, sir;

Q. Captain
you get a good

A. As far as
Sea before.

Q. Sealing?

A. Nor neve

A. Sometimes you see them in large bunches.

Q. But they are generally awake, and you can not get to them?

A. They have what we call lookouts, and are on guard when in herds.

Q. When seals are awake, it is harder to approach them, and, of course, harder to kill them? Difficulty of approach.

A. Yes, sir.

Q. The majority of seals are shot when they are asleep, are they?

A. Yes, sir.

Q. Now, to enter into the matter of taking seals, what are the conditions which would modify the number which can be killed?

A. Well, the state of the weather. If it is raining or strong winds or anything of that kind, the seals do not sleep very well; and in a strong breeze of wind you can not get on to them. Weather.

Q. Do they scent you?

A. If you get to the windward of a seal, they scent you at a long distance. Direction of wind.

Q. For that reason it is better to approach the seals from the lee side?

A. Yes; from the leeward, when the wind is blowing from the seal to the hunter.

Q. What other condition modifies the result when seal hunting?

A. Well, a great deal depends on how the hunter decides to get at the seal. Experience of hunter.

Q. Does the experience of a master have anything to do with it? Experience of captain.

A. Yes, sir.

Q. Explain to the Commissioners why that enters into the modification of the result in seal catching.

A. Well, the master has to do with looking the seals up, and, after he sees them, keeping his vessel in position and sending the boats in a certain direction, and so on.

Q. Has the matter of handling a crew and selecting a crew anything to do with it?

A. Yes, sir; it has a great deal to do with it—whether you get a good crew or a bad crew.

Q. Captain Ogilvie had never been in the Sea before, as far as you know?

A. As far as I know, he had never been in the Bering Sea before.

Q. Sealing?

A. Nor never did any sealing there, as far as I know.

Proximity of
other ves-
sels?

Q. The question as to whether or not there are several vessels in a good locality, has that anything to do with the result?

A. Yes, sir, of course; the more boats there are around, either with shooting or with spears, it wakes the seals and keeps them moving, and you would not get as many as if you were alone.

Chance of
escape.

Q. A seal can travel faster than a man could row in a boat or that a canoe could paddle?

A. Yes, sir.

Q. Or even faster than an ordinary vessel with an ordinary wind could travel after them?

A. Yes, sir.

Q. And they could keep up that rapidity of movement for such a long time as to escape their pursuers, could they not?

A. Yes, sir.

Q. Have you observed what the seals feed upon?

A. Yes, sir; they feed most upon fish and squids and shrimps in different localities.

Q. These fish travel from one part of the sea to the other in the same season?

A. No, sir; the fish shifts, and also the seals shift with them.

Q. That is what I asked you; I asked if they travel after the fish?

A. Yes, sir.

Q. From your experience of your three years in the Bering Sea, do you think that you would be able to estimate the number of skins that a vessel would take in the year 1887 going into Bering Sea?

A. No, sir; I do not.

Captain Miner in his examination made the following statements:

R., 538, line
43.

Q. Now, when you went into the sea in the *Penelope*, did you come upon large number of seals at times?

A. You mean in sight from the vessel?

Q. Yes.

A. I suppose I have seen bunches of 20 or 25 seals.

Q. And in your boats?

Chance in
finding
seals.

A. I have seen the same bunches laying around. We do not estimate the number of seals around by one bunch. We used to run across them.

Q. One bunch would indicate that there were other bunches near?

A. Yes, sir; on the feeding ground of seals.

Q. Do you know of any occurrence, the grounds you saw?

A. I have seen them when they were more numerous.

Q. You could not in a large number?

A. Yes, sir.

Q. What is it?

A. They do not.

Q. They are not?

A. Yes, sir.

Q. And when they are?

A. It is very common.

Q. Is there a shot when they are?

A. Yes, sir; they are shot when they are.

Q. Why is it?

A. Because they are in the front while they sink tail.

Q. And go on?

A. Yes.

Q. They do not?

A. I never know.

Q. You never know?

A. I always know.

Q. And go on?

A. Yes.

Q. They do not?

A. I never know.

Q. You never know?

A. I always know.

Q. And go on?

A. Yes.

Q. They do not?

A. I never know.

Q. You never know?

A. I always know.

Q. And go on?

A. Yes.

Q. They do not?

A. I never know.

Q. You never know?

A. I always know.

Q. And go on?

A. Yes.

Q. They do not?

A. I never know.

Q. You never know?

A. I always know.

Q. And go on?

A. Yes.

Q. They do not?

A. I never know.

Q. You never know?

A. I always know.

Q. And go on?

A. Yes.

Q. Do you find it to occur as an ordinary or exceptional Condition occurrence, that when there are abundant seals on the of seals. grounds you sometimes can not get them?

A. I have seen that so. I have seen it more difficult to get them when there was an abundance of seals than when they were more scattered.

Q. You could kill in a segregated bunch easier than you could in a large bunch? Proximity of other seals.

A. Yes, sir.

Q. What is the difficulty about that?

A. They do not sleep when they are together.

Q. They are disposed to play?

A. Yes, sir.

Q. And when awake is it less easy to get them?

A. It is very much more difficult to get them.

Q. Is there any larger proportion of seals lost after being shot when they are awake? Chance of escape.

A. Yes, sir; of awake seals a large proportion are lost.

Q. Why is that?

A. Because they are standing up in the water and shot in the front while looking at you. They fall on their back then, and I understand that the air comes out of their body, and they sink tail first. Lost by sinking.

Q. And go out of sight and are lost?

A. Yes.

Q. They don't come up again?

A. I never knew of one to come up; a dead seal will sink like a stone.

Q. You never knew of one to come up?

A. I always understood it that way. When the wind is out of them they go down like a stone, but if they are shot from the back they float quite a while.

Q. And they are shot from the back when asleep?

A. Yes, sir.

Q. When you approach them as they are awake they usually are fronting you? Difficulty of approach.

A. Yes; because most of the time if they know you are about they try to look at you.

Q. Do the seals scent a man?

A. Yes, sir.

Q. At what distance?

A. I think at an extraordinary distance.

Q. Beyond the sight of the vessel?

A. Oh, no, sir; but I should think at least 300 or 400 yards. Direction of wind.

Q. Is there any special method adopted because of this in approaching a seal?

A. We always approach from the leeward. That is, if we

are to the windward of the seal we are careful not to pass her that way.

Experience of hunter. Q. Now, Captain Miner, out of a body of seals awake, what proportion of them that are killed are lost?

A. It depends a great deal on the man who shoots them.

Chance of losing. Q. Do you shoot them at some distance when they are awake?

A. If you shoot them at a long distance, I think fully half would be lost.

Q. Fully half?

A. Yes, sir; that is, when we kill at a long distance.

R., 524, line 4.

Seals awakened. Q. Now, Captain Miner, will you please state whether the firing of the guns will awaken the seals?

A. It does very much; yes, sir.

Q. Does it tend to make them wild?

A. Yes, sir.

Q. And do they run from the ship or from the boats when the guns begin to fire?

A. They get away from the boat that is firing as fast as they can.

Q. And they can go faster than a boat can be pulled by an oarsman, can they not?

A. Yes, sir.

Q. So that the guns awaken them, and the seals that are near enough to hear the guns, to be frightened by them, make way.

Atmospheric changes.

A. I think atmospheric changes have a great deal to do with it. Some days they apparently sleep very soundly, do not awake easily, and others they are very easily disturbed.

Q. And then they are restive and run?

A. Very.

Q. And get away?

A. As soon as they can.

Q. Now, is it a fact that, taking the season of July and August, you get a very small proportion of the seals you see, taking the sealing season from beginning to end?

Skill of hunters.

A. Yes, sir; there is a great difference in different men who hunt about that. I have carried men with me who I don't think would average one in ten of what they saw; other men would get nine out of every ten that they saw.

Q. You yourself rarely lose a seal when you get after him?

A. If I get close enough to shoot him.

Q. You usually get a seal when you shoot him?

A. Yes, sir; usually.

Q. So that you get a very large proportion of the seals you shoot?

A. Yes, sir; away.

Q. And once your family not shoot if the

A. Yes, sir; awaken the seals.

A. Yes; and restive than

ing up.

Q. In that

A. Yes, sir; there are a

have seen the sprang up the

Q. And of

A. Yes, sir; seals?

Q. And have seals?

A. Yes, sir; they will roll

Q. What are they are in the

A. The change very cautious

Q. So that seals?

A. The land ing seals.

Q. What position? You

and longitudinal find seals in

you will find year in the

A. No, sir; Mr. Alex

ing and seal eight years

tion with the

Q. And finally say modify

is

A. Yes, sir; I don't like to take chances in their getting away.

Q. And one of the reasons you get so large a proportion is your familiarity with the hunting of seals, so that you do not shoot if the chances are against your getting a dead seal?

A. Yes, sir.

Q. Have you noticed that storms suddenly coming up wind awaken the seals and make them restless?

A. Yes; even a small breeze, I think, makes them more restive than anything else; the beginning of a storm coming up.

Q. In that case they are awakened?

A. Yes, sir; I have noticed a great many instances when there are a great many seals in sight in different places; have seen them every few minutes; and when a light breeze sprang up there was not a seal to be seen.

Q. And of all those seals in sight you would get no more?

A. Yes, sir; they disappeared.

Q. And have you noticed that a heavy rain will awaken seals?

A. Yes, sir; they will not sleep at all in a heavy rain; they will roll and play.

Q. What are the chances of getting seals in sight when they are in that condition?

A. The chances are against getting them; one has to work very cautiously.

Q. So that the large catches are made of the sleeping seals?

A. The largest catches are made in calm weather of sleeping seals.

Q. What have you to say, Captain Miner, as to this proposition? You seal in Bering Sea at a given point of latitude and longitude on the 8th of July, we will say, 1886, and you find seals in plenty and good hunting. Does it follow that you will find seals at the same season of the year another year in the same latitude and longitude?

A. No, sir, it doesn't.

Mr. Alexander, whose investigation relative to fishing and seal hunting in Bering Sea for a period of eight years makes his testimony of value in connection with the present subject, testified as follows:

Q. And from your experience, what conditions would you say modify the number of seals taken by vessels?

R., 473, line 46.

Experience
of captain
and hunt-
ers.

Proximity of
other ves-
sels.

Weather.

A. The condition of the weather would enter largely into it, and the skill of the hunters, the previous experience of the captain and the executive ability in regard to handling crews, *particularly those made up of Indians*, and the chances of catching seals and possibly remaining among them when found. I mean of finding seals, and of remaining among them when found.

Q. What would you say as to other vessels being in the vicinity?

A. A large number of vessels being in the vicinity would lessen the chances of each vessel taking seals.

Q. And what would you consider favorable weather for sealing.

A. Favorable weather would be clear, or a comparatively sky and a smooth sea and a gentle or a very moderate breeze.

Q. Does the weather previous to a clear sky modify the catch at all in any way?

A. The weather previous?

Q. Does the weather previous to a clear spell affect the catch?

A. Yes, sir.

Q. Explain that, please.

A. For illustration, there has been a good deal of wind blowing in any direction for three or four days, and the seals are tired out. They will naturally sleep more soundly at the end of the gale of wind than otherwise. Take it on the other hand, when seals have been resting for a long time—I might state it this way, that in a heavy gale of wind seals do not sleep very soundly, and possibly will not sleep at all unless they have been tired out by previous exhaustion by a series of gales, something which has interrupted their sleep, but in cases where they have been interrupted by wind and weather they will sleep under conditions which they would not otherwise do.

Q. That is a fact, Mr. Alexander, is it not, that not only the weather of the day on which a lowering is made affects a catch, but also the weather that has previously been bad?

A. Yes, sir.

Q. And what would you consider unfavorable weather for sealing, beside the mere fact of being unable to lower your boat on account of rough water?

A. Well, at times very foggy weather interferes with the lowering of the boat, and sometimes heavy rain will interfere; that is, it won't interfere with the lowering of the boat, but the chances are unfavorable for catching many seals when it is raining very hard.

Q. Why is

A. Because become restless hard to approach

Q. What w rience, as to t

A. It is var

Q. Is it var

A. It is.

Q. Can you

A. I can ill

before spoken

tion of it we

islands, or th

lowered the

nearly all the

or two and a

the Bogosloff

and a large n

in gales of wi

*

Q. Now I v

to zones of g

A. I think

bad weather.

Q. What v

fair weather

A. There a

absolutely ce

to find foul

stances.

Q. Is there

in abundance

A. I know

Q. In your

the same pla

A. We fou

number, or e

ried.

*

Q. Mr. Al

give for the

tain time, an

A. Oh, la

they subsist

Q. What

A. Their

medusae, an

Q. Why is that?

A. Because the heavy rains oftentimes cause the seals to become restless. They don't sleep soundly, and they are hard to approach.

Q. What would you say, from your knowledge and experience, as to the weather in the sea?

A. It is variable.

Q. Is it variable in different localities in the sea?

A. It is.

Q. Can you illustrate that in any way?

A. I can illustrate it by a cruise I made in the *Louis Olsen*, before spoken of, during the month of August. A larger portion of it we were to the west and northwest of the Seal islands, or the Pribylof Islands, during which time we only lowered the number of days which I have mentioned; and nearly all the time, if not quite all the time, two degrees south, or two and a half, as the case may be, down at what they call the Bogosloff Grounds, there were lowerings made every day, and a large number of seals were being taken, while we were in gales of wind nearly all the time.

Q. Now I will repeat the question. What would you say to zones of good weather, and zones of bad weather?

A. I think there are zones of good weather and zones of bad weather.

Q. What would you say as to any particular locality for fair weather?

A. There are no known spots so far as I know where it is absolutely certain to find fair weather, or absolutely certain to find foul weather. They vary according to the circumstances.

Q. Is there any locality where seals can always be found in abundance?

A. I know of none.

Q. In your experience of two years, did you find seals at the same place?

A. We found seals, but they were not always of the same number, or equally abundant one time as another; they varied.

Q. Mr. Alexander, will you state what reason you would give for the abundance of seals at a certain place and a certain time, and their not being found at another?

A. Oh, largely to the migratory species of the fish which they subsist on.

Q. What is their food?

A. Their food consists of cod, in a measure, salmon, squid, medusæ, and floating crustacea.

Q. You would say practically they are surface feeders?

A. They are practically surface feeders.

Q. And the species of fish migratory?

A. Migratory.

Proximity of
other ves-
sels.

Q. What would you say as to the number of vessels in a certain locality affecting the catch?

A. I should think that a large number of vessels in a locality where seals were fairly abundant would have a tendency to lessen the individual catch.

Q. Why?

A. Because seals are very timid, and the more boats there are on a given ground covering a small or large area, as the case may be, would have a tendency to frighten them. It does frighten them; they are harder to approach—less easily obtained.

Condition of
seals.

Q. Now, from your knowledge of sealing in Bering Sea, even if you possessed the data as to the number of hunters, their skill, the experience of the captain, and the conditions of the weather, locality of the vessel, and the proximity of other vessels, do you think there is any basis upon which the probable catch of a vessel for a given period of time could be predicated?

A. I do not.

Q. In connection with your duties on the Fish Commission, have you studied the habits of migratory fish in Bering Sea that you have spoken of?

A. Yes, sir.

Q. How many years have you made a study of those?

A. I think it is eight years since I first went there.

Besides the testimony of the four witnesses given above, the evidence relating to this subject is as follows:

The first citation is an abstract read into the Record from the case of the United States submitted to the Tribunal of Arbitration at Paris. It relates particularly to the difficulty the hunter experiences in approaching a seal and securing it after being wounded.

R., 273, line
30.

This is self-evident, when the fact is taken into consideration that the boat is in almost constant motion, and the mark is the small head of a seal, among the waves, 30, 40, 50, or, when a rifle is used, even 100 yards from the hunter. Four other conditions also modify this possibility of loss: First, the state of the weather, for if the water is rough the

boat and the
those killed on
the sea is smoo
for if breechin
paralyze the
seal is asleep
exposed as a r
be considered
wild and hard
necessity comp

A second
of the diffic
been killed.

Besides the
killed outright
the seal being
secured. In
each boat can
'ong, with wh
it sank can be
ing a sinking
the seal was a
or smooth, an
animal, as al
eye the place
that the rang
is killed out
wher "e sea

The above
rience of t
is upon the
William
testified:

Q. Now, w
catch of a ves

A. It does

Q. What
know of, th
hunter as ag

A. I do not

Q. What
ference in th
except the s

boat and the seal having more motion the percentage of those killed or stunned by the shot is much less than when the sea is smooth; second, the condition of the seal shot at, for if breeching, the shot being at the body is not liable to paralyze the animal, though it may be as fatal as when the seal is asleep on the water with only a portion of its head exposed as a mark; third, the skill of the hunter is also to be considered; and, fourth, whether or not the seals are wild and hard to approach, in which case the hunter is from necessity compelled to fire at long range.

A second citation from the same document treats of the difficulty of securing the animal after it has been killed.

Besides those lost by wounding, in many cases others killed outright are not taken, because the specific gravity of the seal being greater than water, it sinks before it can be secured. In order to save as many sinking seals as possible, each boat carries a gaff with a handle from four to six feet long, with which to grapple the carcass, if the point where it sank can be reached in time to do so. Of course, in securing a sinking seal much depends on the distance from which the seal was shot, the condition of the water, whether rough or smooth, and whether or not darkened by the blood of the animal, as also the skill of the hunter in marking with his eye the place where the seal sank. It can therefore be seen that the range of possible and probable loss, in case the seal is killed outright, is certainly large, though not so great as when a seal is wounded.

The above citations relate particularly to the experience of the hunter, and the following testimony is upon the same subject.

William T. Bragg, called on behalf of Great Britain, testified:

Q. Now, witness, does it make any difference about the catch of a vessel, the capacity, and experience of the hunters? R., 265, line 6.

A. It does.

Q. What other contingencies are there, witness, that you know of, that would make a difference in results of one hunter as against another, or of one boat as against another? R., 265, line 44.

A. I do not understand your question.

Q. What facts that you know of arise, which make a difference in the catch of one boat as compared with another, except the scarcity or plentifulness of seals?

A. Well, some hunters are superior to others, and then, again, it depends on your boat's crew.

Q. Your vessel's crew, you mean?

A. The crew of the boat.

Q. Of the small boat?

A. Of the small boat; yes, sir.

Q. What do you mean by that? What would depend upon the crew, as to whether they could reach the seal or not after it was shot?

A. It is in chasing a cripple, or in getting over more ground. A good crew can get over more ground in a day than a poor crew, and the more ground you go over the more seals you are liable to get.

J. D. Warren testified as follows:

R., 288, line 39. Q. Does the result of the sealing voyage depend, to any extent, on the experience of the hunters?

A. Oh, yes.

Captain McKiel, testified:

R., 327, line 65.

Q. Is it an advantage to have three men in a boat?

A. Yes, sir.

Q. And you would not have such good results with two men in a boat?

A. Well, no; three men do better work than two men.

Q. One of them pulls the boat, one of them steers the boat, and one of them shoots?

A. Well, yes; the steerer's work is to get up on the seals; he steers the boat up on the seal.

Q. And outside of that time he also pulls?

A. Pulls or pushes.

Q. Is it a fact that sometimes the puller or steerer, or both, shoot?

A. Never to my knowledge.

Q. But where there are three men in a boat, it gives the hunter better opportunity to shoot than where there are only two?

A. Yes; the hunter has a better opportunity.

Q. And it is to be expected that he will have better results?

A. Exactly.

Capt. W. E. Baker, gave the following testimony:

R., 727, line 58.

Q. Now, does it make any difference in the result as to whether your hunters are experienced or not?

A. Yes, sir.

Q. And, the he was a good his earlier year

A. Yes, sir.

Q. Well, ad much experie would be fair you did?

A. No, sir.

As to the Bragg, testified stated:

Q. Do resu of a vessel as

A. It does.

Q. And th one of the m

A. He was

Captain some degre in Bering S

Capt. C.

Q. Is it no and his repu his crew of

A. Oh, ye

Q. And b aging them

A. Yes.

*

Q. You w was not a g whether the captain han

A. Yes, s

Q. Assum handle his

A. I cons among them

Q. If you among them

A. Yes, t

Q. And, therefore, a man with three years' experience, if he was a good shot, would get more seals than he would in his earlier years?

A. Yes, sir.

Q. Well, admitting, then, that their hunters had not as much experience as your hunters, would you say that it would be fair to base the catch of the other vessel on what you did? R., 789, line 19.

A. No, sir.

As to the experience of the captain, the witness Bragg, testifying in regard to the *Mary Ellen* in 1886, stated:

Q. Do results depend any on the capacity of the master of a vessel as to his experience in the manner of locating? R., 265, line 52.

A. It does.

Q. And the Captain of your vessel, Daniel McLean, was one of the most experienced men in the business?

A. He was.

Captain Baker said that the skill of the captain in some degree entered into the probabilities of a catch in Bering Sea. R., 723, line 27.

Capt. C. N. Cox gave the following testimony:

Q. Is it not a fact, Captain, that a man's skill as a captain and his reputation depend on the success he has in handling his crew of hunters and seamen? R., 608, line 22.

A. Oh, yes; to a certain extent it does.

Q. And by handling his crew with success, you mean managing them so that you can get the best results?

A. Yes.

* * * * *

Q. You were asked by Mr. Warren as to whether there was not a good deal of luck in this matter, and particularly whether there was not a good deal depended on the way the captain handled his men, and you said there was. R., 612, line 53.

A. Yes, sir.

Q. Assuming that you have a captain who knows how to handle his men, there is not much chance about it, is there?

A. I consider the chances are whether the captain stays among them and gets them or not.

Q. If you once find seals the captain's duty is to keep among them?

A. Yes, sir.

Q. And if you do that is there much chance about it?

A. No chance whatever.

Q. Why?

A. If you stay among them you will get them.

R., 613, line
19. A portion of this extract is cited in the Argument on behalf of Great Britain to establish the certainty of securing seals. It is needless to say, in connection with the witness's statement that the seals are found "scattered about," and "three or four, or two" together, "very often one," that the chances he refers to are sufficiently numerous to make the probable success of *staying among them* very uncertain.

The capacity of the hunting power of a canoe depends in a measure upon the number of skilled hunters it contains. Upon this subject J. D. Warren testified as follows:

R., 280, line
24.

Q. And how many of them hunted?

A. There were not always two hunters; sometimes there was merely a canoe steerer and an experienced Indian hunter. Sometimes there would be two experienced hunters in the canoe.

Q. How many, all told, in the canoe?

A. Two. Sometimes they would be both experienced hunters, and one would paddle and the other one would strike (spear) the seal, or sometimes they would both strike the seal.

Q. And actually hunting in each canoe, how many were there?

A. Two.

Q. But you say that one had to paddle and manage the canoe?

A. Well, sometimes, if they came on two seals, both would strike.

Q. But, as a rule, one was to manage the canoe and the other to hunt or strike the seal?

A. Yes.

Q. What you mean by there being two hunters is that they both had spears and were prepared to hunt if they got the chance?

A. They were both practical spearsmen.

Although in some instances guns were used by Indian hunters, yet it appears from the evidence given

by William
use in the y

Q. You were
white men
question: In
using guns a

A. No.

Q. So if y
have to use s

A. Yes, si

Q. At tha
guns?

A. Guns.

The unne
ficulty whi
because of
a complete

Alexand
Great Brit
the *Grace*
lowing tes

Q. And v

A. We le

Q. Why c

A. Well,

Q. Did th

A. They
any longer.

Q. They
pose?

A. No, si

Again,
same with

The Indi

*

Q. Is it
pretty har
get away?

A. Yes;

Q. Are

by William D. Byers that they were not skillful in their use in the years 1886 and 1887. The witness testified: R., 324, line 9.

Q. You were asked something about the difference between white men and Indians. I simply want to ask you this question: In 1886 and 1887 were the Indians in the habit of using guns at all?

A. No.

Q. So if you had an Indian crew at that time you would have to use spears?

A. Yes, sir.

Q. At that time which were considered best, spears or guns?

A. Guns.

The unreliability of the Indian hunters and the difficulty which attended their employment as hunters because of their ignorance and superstition receive a complete demonstration from the evidence.

Alexander Reppen, called as a witness on behalf of Great Britain, being questioned as to the reasons for the *Grace* leaving Bering Sea in 1886, gave the following testimony:

Q. And when did you leave the Bering Sea?

R., 307, line 10.

A. We left on the 14th or 15th of August.

Q. Why did you leave on the 14th or 15th of August?

A. Well, Indians wanted to go home.

Q. Did they object to remaining any longer?

A. They were afraid, I think. They objected to staying any longer.

Q. They were not used to going to Bering Sea, I suppose?

A. No, sir.

Again, at another place in his examination, the same witness said:

The Indians don't go out in foggy weather.

R., 308, line 23.

Q. Is it not a fact that before you came out it was blowing pretty hard, and that was the reason the Indians wanted to get away?

R., 310, line 30.

A. Yes; the weather commenced to be a little bad.

Q. Are not the Indians very superstitious?

UNCERTAIN CHARACTER OF SEAL HUNTING.

A. Yes; they are as a general rule.

Q. And if they want to go away do the captains have to go?

A. Yes; to humor them. It is of no use to go against them.

Q. Is it not a fact that the season was practically ended on the 15th August that year?

A. If we had had white men we could have stayed longer.

Capt. William Cox, relied upon by Great Britain, gave the following testimony:

R., 757, line
35.

Q. Why did you leave on the 15th of August?

A. The Indians would not work any longer.

Q. And you left on the 15th of August?

A. Yes, sir.

Q. And the Indians mutinied and would not work?

A. They would not work.

Q. What was the matter with the Indians?

A. They wanted to go home.

Q. Did you have to go home?

A. Yes.

Q. Was there any talk of seizure in 1890?

A. No.

R., 758, line
55.

Q. When you say the Indians wanted to go home, what did they do?

A. They broke their spears up and threw their paddles away.

Q. Was there any use staying any longer?

A. No.

Q. How was the weather getting when that happened?

A. It was getting better.

And again in dealing with the general question of the difficulties to be met by a captain who has employed Indian hunters, he testified:

R., 762, line
37.

Q. An Indian is usually ready when he is off sealing to make what money he can, is he not?

A. Yes, sir; when he is out there, but when they take a notion in their heads money won't stand in the way.

Q. The only notion you know they took in their heads was they wanted to go home because of dirty weather?

A. Well, as I say, there was one sick Indian aboard; the Indians were all afraid he would die and be a sort of Jonah.

Q. They a
A. Very.

The conc
a voyage an
them C. N.

Q. Just te
experience i
seals are the
how do they
A. Oh, we
When the d
whether we
ground for s

After rel
large body
ness was a

Q. You n
them?

A. I have
but I don't
purpose.

Q. You d
boats go ou
and left?

A. No, si

Q. They

A. Yes;

Again,
done, the

Q. They
they find a
he may be

A. Yes,

Q. Then

A. Yes,

Q. It is

ber of seal
of the her
approach t

Q. They are superstitious about that, are they not?

A. Very.

The condition of the seals as affecting the results of a voyage are referred to by several witnesses. Among them C. N. Cox gave the following testimony: R., 608, line 37.

Q. Just tell the Commissioners—you have had considerable experience in sealing—when you are out sealing how many seals are there in a bunch that hunters go after ordinarily; how do they travel?

A. Oh, we lower very often and we don't see seals at all. When the day is fine enough to put our boats out we lower whether we see seals or not, when we consider we are on the ground for seals.

After referring to a single instance when he saw a large body of seals off the Columbia River, the witness was asked:

Q. You never saw any in Bering Sea in such crowds as R., 608, line 60. them?

A. I have seen quite a number of seals from the vessel, but I don't know that we ever lowered expressly for that purpose.

Q. You don't want to be understood as testifying that boats go out into a large herd of seals and catch them right and left?

A. No, sir.

Q. They take them up separately?

A. Yes; one and two together—three.

Again, referring to the way in which the hunting is done, the witness gave testimony:

Q. They [the canoes] circulate about the boat, and when they find a seal sleeping, traveling, or breaching, whatever he may be doing, they kill it. R., 609, line 3.

A. Yes, sir.

Q. Then they go searching for another?

A. Yes, sir.

Q. It is a fact, is it not, that when there are a large number of seals traveling together, they have seals on the edge of the herd that keep an outlook, and it is very hard to approach them?

A. Yes; when they are sleeping, a large number together, they are much more difficult together than if sleeping singly.

Q. Then it is a fact that if they are more abundant in the neighborhood of the vessel it is harder to get them?

A. I do not think so.

Q. Where there is a large bunch of seals asleep they always have outlookers?

A. There is generally one or two awake.

Q. They make a noise and others are aroused?

A. Yes, sir.

Upon his redirect examination the witness was asked:

R., 613, line 1. Q. Do seals herd together, as Mr. Warren suggests?

A. I have never seen them that way.

R., 613, line 12. Q. Coming back to the point about the seals being all in a herd together, is that the case at all in the months of July, August, and September?

A. I have never seen them in that way.

Q. How do you find the seals then?

A. Scattered about.

Q. On certain grounds?

A. I seldom find them on the same grounds.

Q. How many will you find together, as a rule?

A. Three or four, two, very often one.

Q. And this idea of large herds with watchmen to keep the pelagic sealer off, is there any of that kind in Bering Sea?

A. Not in my experience.

R., 613, line 31. Q. Did you ever meet a mass containing as many as 25 seals close together in Bering Sea at once?

A. No, sir.

Q. You meet them in scattered numbers?

A. Yes, sir.

Thomas H. Brown, sworn on behalf of Great Britain, on cross-examination was asked if he had made an affidavit, a copy of which appeared in the proceedings of the Tribunal of Arbitration at Paris. He replied that he had, and that the statements contained in it were true. Paragraph 8 of the affidavit contains the following:

R., 652, line 51. I am sure that I don't shoot at one out of fifty seals that I see; probably not one out of a hundred.

Capt. W
tions which
that "the
times."

Gidding

You may

His exa

Q. You w
around the
observation

A. I was
of hundred

Q. Why?

A. On ac
their travel
can not get

Q. There
any of them

A. Yes.

The im
success of
several w

Alexan
upon this

Q. While
days?

A. Not v
Q. Did y
in July?

A. Yes.

Q. Did y

A. About

Q. You

A. Yes.

Q. You

good weat

A. Yes.

Q. And

Capt. W. E. Baker, testifying as to the modifications which enter into the catch in Bering Sea, stated that "the seals are wilder sometimes than at other times."

Gidding C. Gerow testified:

You may be amongst lots of seals and not kill any.

R., 728, line 25.
R., 1499, line 15.

His examination also contains the following:

Q. You were going to tell us that there were many seals around the boat and that you could not get any. What observation have you to make about that?

A. I was merely going to say that you might be in sight of hundreds of seals and you could not possibly get one.

Q. Why?

A. On account of the wind, and on account of, sometimes, their traveling; and you may see thousands of them and you can not get a seal.

Q. There may be seals all about you and you could not get any of them?

A. Yes.

The importance of the weather in determining the success of hunting in Bering Sea is referred to by several witnesses.

Alexander Reppen, already cited, testified as follows upon this subject:

Q. While you were in the sea were there many calm days?

R., 810, line 66.

A. Not very many.

Q. Did you have worse weather [in August] than you did in July?

R., 311, line 50.

A. Yes.

Q. Did your sealing end about the 10th of August?

A. About that time, I think.

Q. You went out of the sea on the 15th of August?

A. Yes.

Q. You stated that you were there several days waiting for good weather, did you not?

A. Yes.

Q. And the good weather did not come?

A. No.

Q. So you went out of the sea?

A. Yes.

Q. It was bad weather; that was the chief reason why you left the sea?

A. Yes.

The witness, C. N. Cox, to whom reference has been made, was asked:

R., 608, line 15. Q. You did not think that because you take seals in one part of the month that that is any indication that you would take them in another part of the month?

A. A great deal depends on the weather.

Bearing upon the weather conditions, and especially upon the frequency and density of the fogs which prevail in these waters, is evidence relating to the common occurrence of the loss of canoes while hunting.

R., 750, line 25. Captain Laughlin McLean said that he picked up four canoes which had been lost from another vessel.

R., 671, line 30. Captain McKiel testified that during his voyage in 1889 he lost three canoes about the 13th of August. He was asked, "Was that with the men in them, or did they simply go adrift?" and replied: "The men went adrift; we lost them in a fog."

R., 615, line 3. Gustav Hansen stated that during the cruise of the *Adele* in 1888 he lost a canoe and spent a week searching for it, and that he was compelled for this reason to cease hunting.

Captain W. E. Baker, asked as to the contingencies

R., 728, line 23. which enter into the number of seals taken, stated, "The weather for one thing."

Q. And rain?

A. Wind and weather.

Q. And fog; I suppose you will include that?

A. Yes, sir.

J. D. Wa
the witness

Q. Did yo
Bragg, this
it was impos

A. Yes, I
good sealing

Relating
dance, the

Q. Are th

A. No.

Q. It just
and stay the

A. Yes, s

Q. And t
direction?

A. Yes, s

Q. And t

A. Yes, s

Q. And t

A. Yes, s

Q. And if

A. Yes, s

Q. And so

A. Yes, s

Q. And t

or a hundre

A. Yes.

Capt. L
gave the f

Q. You d
Bering Sea
sealing, do

A. No.

Q. As a n
find seals, d

A. Not ex

Sea next y
most this y

Q. If you
never got a

A. Certa

J. D. Warren, after listening to the testimony of the witness Bragg relating to 1886, was asked:

Q. Did you hear the testimony of the witness Captain R., 284, line Bragg, this morning, regarding the days in that year when it was impossible to do any sealing?

A. Yes, I heard him name bad days for him, when I had good sealing days.

Relating to the chance of finding seals in abundance, the witness Alexander Reppen testified:

Q. Are the seals thicker in one quarter than in another? R., 310, line

A. No.

Q. It just happens that you run across a number of seals, and stay there for awhile?

A. Yes, sir.

Q. And then you go sixty or seventy miles in another direction?

A. Yes, sir.

Q. And then lie to and send out your canoes?

A. Yes, sir.

Q. And then you stay there a day?

A. Yes, sir.

Q. And if the seals are thick you stay there two days?

A. Yes, sir.

Q. And sometimes more?

A. Yes, sir; sometimes more.

Q. And then you pick up your canoes and move off sixty or a hundred miles in another direction?

A. Yes.

Capt. Laughlin McLean, in his cross-examination, gave the following testimony:

Q. You don't mean to say there are any stated courses in R., 332, line Bering Sea on which a vessel sails each year when she is sealing, do you? 17.

A. No.

Q. As a matter of fact, you go at random, wherever you can find seals, do you not?

A. Not exactly at random. For instance, if I go into Bering Sea next year I will cruise around where I saw them the most this year. If there are none there I will—

Q. If you happen to get some seals last year where you never got any before, would you go there this year?

A. Certainly.

Q. Then you would go where you thought you would have good luck; is that it?

A. Well, I would prospect around until I found some seals, and if I find enough to warrant my staying I would stop.

Capt. C. N. Cox, being cross-examined as to the contingencies which affect the catch of seals in Bering Sea, testified:

R., 608, line 18.

Q. And there is a great deal of luck in it?

A. There is a certain amount of luck.

Q. And there is a chance of finding where the seals are and getting them?

A. Yes, sir.

R., 612, line 60.

In that portion of the redirect examination of this witness which has already been quoted, attention is called to his statement that he considered "the chances are whether the captain stays among them [the seals] and gets them or not."

Capt. W. E. Baker, already referred to, testified as follows:

R., 728, line 34.

Q. Would you say there was any luck in running across the seals when you are looking for them on your schooner?

A. Yes; a good deal. They call it luck.

Q. A good deal of luck, is there not?

A. Yes, sir.

The contingencies which enter into the speculation of how many seal skins may be secured during a hunting cruise in Bering Sea, which have been presented in detail with the substantiating evidence, may be briefly summarized as follows: The smallness of the vessels employed; the extraordinary perils of a voyage to and cruise in Bering Sea; the experience and skill of the master, hunters, and crew; the unreliability of Indian hunters through their ignorance and superstition; the frequent inclemency of the weather; the prevalency of fogs and rain; the condition of the animals when hunted, and the uncertainty of finding seals. These contingencies, the United States claim, are of such a nature as to make impossible any method of computing an estimated catch, which will be just.

NO DEFINITION

The Argument portion entitled "sealing grounds" with one of the problems first be observed "sealing grounds" become common been adopted ignorance of "grounds," to one not fish seal skins, the grounds, in various species where seals the Commission that no such connection "grounds," and words "fish hunting seal principal for where seals ing banks" the character those who destruction.

The Argument to establish in Bering S

NO DEFINED "SEALING GROUNDS" IN BERING SEA.

The Argument on behalf of Great Britain, in that portion entitled "The character and extent of the sealing grounds in Bering Sea," endeavors to do away with one of the many contingencies that enter into the problem of estimating a probable catch. It should first be observed that the employment of the words "sealing grounds" is a misuse of language, which has become common to sealing captains, and has often been adopted by others through thoughtlessness or ignorance of the character of seal hunting. The word "grounds," applied to a sea area, conveys the idea, to one not familiar with the occupation of procuring sealskins, that it partakes of the nature of fishing grounds, implying shoals or banks abounding in various species of fish. But in the area of Bering Sea, where seals are hunted, the charts submitted before the Commission, which give soundings, demonstrate that no such banks exist. It is also to be noted in connection with the misuse of the term "sealing grounds," that there is a similar misappliance of the words "fishing" and "fishery" to the occupation of hunting seals. That sealing partakes of none of the principal features of fishing, and that the waters where seals are shot are in no way analogous to "fishing banks" or "fishing grounds," but possess rather the character of "whaling grounds," are evident to those who have become familiar with seal life and its destruction.

The Argument on behalf of Great Britain attempts to establish in this chapter that there are limited areas in Bering Sea where seals can at all times during the

months of July and August be found in sufficient abundance to warrant this High Commission estimating the probable number of skins which a seized or warned vessel might have taken if her voyage had not been interrupted.

The portion is divided into two parts, the first dealing with supposed localities where seals may be found in abundance by the hunters, and the second attempting to demonstrate how plentiful the seals are in these areas.

The endeavor is made to establish the first proposition by several quotations from the case of the United States at Paris, which may be briefly stated to affirm that seals are killed by the hunters at long distances from the rookeries. That this position assumed in the case of the United States is correct, an examination of the testimony taken before the Commissioners fully substantiates, but that it bears upon the question under discussion is denied.

Br. Arg., 57,
line 49.

The next class of evidence produced consists of certain charts submitted with the United States case at the Paris Tribunal. The first of these referred to is a "migration" chart, which, it is stated in the Argument on behalf of Great Britain, "shows that the seals in July, August, and September of 1891 were observed by the patrol vessels of the United States to have been mostly in the position above referred to." This statement is undoubtedly an error, as the chart to which reference is made is number 3, in volume 3, American reprint of the Paris Tribunal. No reference is made in that chart to the vessels which patrolled the sea in 1891, while there is, at page 602 of the same volume, a summary of the data contained in the chart. That it was of necessity conventional in construction and merely suggestive of the supposed route of the migrating seals from January *until* July is apparent from an examination

of the data more, in the page 105, t

From the f chart has be the United S

This latte and is discu

The seco "sealing ch this chart f placing it in scattered i 200 miles platted, bu indicate th should not seals are in

With thi to rest upo

The thir where Bri warned in upon the United Sta ing vessels the most c nearest to invariably

The fou the United 1887. Th paratively chart was

The fift States sch appears to

of the data from which it was constructed. Furthermore, in the counter case of the United States, at page 105, the following statement appears:

From the further data mentioned above, a new migration chart has been drawn, correcting and modifying the one of the United States. R., 245, line 38.

This latter chart superseded the one put in evidence, and is discussed at another place.

The second chart referred to is the one termed "sealing chart." An examination of what appears in this chart fails to disclose any purpose whatsoever for placing it in evidence. That the seals are thoroughly scattered in Bering Sea at distances of more than 200 miles from the Islands appears from the data platted, but the conventional use of short lines to indicate the number of seals counted during a day should not be misconstrued into a statement that the seals are in bands of that number. Br. Arg., 58, line 4.

With this explanation, the United States are willing to rest upon the facts disclosed by the "sealing chart." Br. Arg., 58, line 9.

The third chart, on which are platted the positions where British and American vessels were seized or warned in the years 1886, 1887, and 1889, bears upon the question of the skill and industry of the United States revenue officers in intercepting the sealing vessels after their entrance through Unimak Pass, the most easterly of the passes, and therefore the nearest to Victoria and San Francisco, and almost invariably used by sealing craft when entering the sea.

The fourth chart referred to is that of the cruise of the United States schooner *Ellen* in the season of 1887. The sea area covered by her cruise is comparatively limited and her catch as shown by the chart was inconsiderable. Br. Arg., 58, line 15.

The fifth chart is that of the cruise of the United States schooner *Annie* in the same year. The vessel appears to have never approached within 120 miles Br. Arg., 58, line 20.

of the Pribilof Islands. The area covered in her cruise, which lasted forty-four days, extends for 120 miles northwest from Akutan Pass and about the same distance southwest from a line drawn from Unimak Pass to the Pribilof Islands.

Br. Arg., 58,
line 24.

The sixth chart is of the cruise of the British schooner *Alfred Adams*, one of the vessels seized in 1887. An examination of the course which the schooner took after entering Bering Sea, compared with that of the *Ellen* and the *Annie* already referred to, shows that the area covered was substantially distinct and separate from the other two.

Br. Arg., 58,
line 26.

The seventh chart is that of the cruise of the *Ada*, one of the British vessels seized in 1887 by the United States, and for which a claim is made before this High Commission. The cruise of this vessel was entirely different from those of the other three schooners referred to. She covered during the period from 15th of July to the 25th of August, when she was seized, an area extending 150 miles northwest from Unimak Pass and fully 100 miles west from 164° 30' west longitude.

Am. Rep.,
vol. 7.

Br. Arg., 58,
line 29.

The eighth chart referred to is chart No. 1, counter case of the United States at Paris. It demonstrates that in connection with the patrol of the sea in the year 1891 the only coaling station in the eastern part of Bering Sea is at Unalaska, in Iliuliuk Harbor.

Am. Rep.,
vol. 7.

Br. Arg., 58,
line 34.

The ninth chart referred to is No. 3, counter case of the United States at Paris, and establishes the same fact.

Am. Rep.,
vol. 7.

Br. Arg., 58,
line 40.

The tenth chart is No. 6, counter case of the United States at Paris, and is of value in showing how far seals wander in search of food from the Pribilof Islands, bearing in mind that the dots used to indicate the seals seen do not represent herds, but the number observed by a vessel in any given day. For example, at 55° 10' north, and 168° east, there appears to be

a mass of
fional dots
number of
seal to eve

The ele
"migration
the United
it modifies
case of th
although th
ber, Decem
the first c
employed
animals.
submitted
Great Brit

It suffici
first referre
the pass of
which seals

Referen
prepared,
Paris, show
outside of
statement
by the dat
examined,
on the par
exists bet
and the P
Further
United St
Great Brit
ment den
ferred to
data from
larly refer

a mass of seals. The area covered by these conventional dots is 20 miles long and 12 to 15 wide. The number of dots is 102, or an average of about one seal to every 2 square miles represented.

The eleventh chart referred to is the corrected "migration" chart submitted with the counter case of the United States at Paris. The statement as to how it modifies the first migration chart submitted with the case of the United States is substantially correct, although there appear included the months of November, December, and January, which are not shown in the first chart. The same conventional method is employed in platting the course of the migrating animals. The purpose for which these two charts are submitted is indicated in the Argument on behalf of Great Britain in the following language:

It sufficiently indicates, as well as the migration chart first referred to, the comparatively limited space between the pass of the Aleutian Islands and the Pribilof group, in which seals are found. Br. Arg., 58,
line 50.

Reference to the data from which these charts were prepared, given in the case of the United States at Paris, shows that the charts only referred to the seals *outside* of Bering Sea. There is no warrant for the statement contained in the British Argument as shown by the data in the light of which the charts must be examined, and there is no ground for the contention on the part of Great Britain that a "stream of seals" exists between the eastern passes of the Aleutians and the Pribilof Islands. Am. Rep., vol.
3, p. 602.

Furthermore, the extract from the case of the United States, quoted in the Argument on behalf of Great Britain, in connection with the foregoing statement demonstrates conclusively that the chart referred to seal migration *outside* of Bering Sea, the data from which they were prepared being particularly referred to in the extract. Br. Arg., 59,
line 8.

Br. Arg., 59.

References are made in the opposing Argument to certain maps prepared by Mr. C. H. Townsend, of the United States Fish Commission. The first of these contains data so meager as to be practically of no value for the purpose for which it is cited. The logs of only two vessels are used for the years 1886 and 1887—those of the *Mary Ellen* and *Favourite*—as is shown by reference to the data from which they are platted. It would appear that in this portion of the British Argument the *Favourite* remained on the so-called "sealing grounds" in 1886, which is a position contrary to the one assumed in discussing that claim in detail.

Br. Arg., 59,
line 25.

The second Townsend map is based on data for the year 1894, and, though conventional in construction, it shows one important fact, namely, the area of sea over which sealers hunt.

Br. Arg., 59,
line 33.

The third map, for 1895, is useful for the same purpose. The references to the month of September in 1894 are borne out by the data, but the year is so remote from the period of this discussion, and the evidence as to catch and duration of the season having been specifically limited by the Commissioners to the year 1890, the use of this map for any purpose other than to show the extent of sea over which seals are distributed is unwarranted.

R., 1257, line
15.

The next evidence advanced in relation to localities where seals are "always to be found in abundance" is an extract from the deposition of a pilot, who was employed in the Revenue-Marine Service of the United States for seven years preceding August, 1886, which he gave at Sitka in that year.

It is first to be noted that 1886 was the first year when the revenue cutters of the United States were employed in cruising for sealing vessels.

In the second place, an examination of his deposition shows that he had peculiar views in regard to seal life.

The chief establish can with a upon oral divided in statements tions when the Argum considerat in the Arg is as follow

Bragg (erroneous as east of

Warren year 1886

An exa which Wa sea in his tude, and It is appro east and v

O'Leary 90 miles as 120 m fore, an a

Ramlas tion at ab Repper west, north but one d lof Island

Moss is Britain as the log o more val The log southwest

The chief endeavor on the part of Great Britain to establish certain defined areas of sea, in which seals can with approximate certainty be found, is based upon oral evidence. Testimony of this class is divided into two heads, those comprising general statements, and those specifying the areas and positions where seals were taken. Upon this latter class the Argument on behalf of Great Britain rests in its consideration of this subject. The witnesses quoted in the Argument and the substance of their testimony is as follows:

Bragg gives his position during the year 1886 (erroneously cited as 1888 in the British Argument) as *east* of the Pribilof Islands and *south*. Br. Arg., 60.
R., 268, line
55.

Warren gives his direction from the islands for the year 1886 as *southeast* and *south*. R., 281.

An examination of the cruise of the schooner of which Warren was master shows that he covered the sea in his operations from 54° to $56^{\circ} 5'$ north latitude, and from $164^{\circ} 10'$ to $168^{\circ} 30'$ west longitude. It is approximately an area of sea extending 150 miles east and west and 120 miles north and south. R., 281.

O'Leary gives his position in 1886, during July, as 90 miles *west* of the Pribilof Islands, and in August as 120 miles *south* of the islands; covering, therefore, an area over 200 miles in length. R., 292, lines
1, 23.

Ramlase, on the *Theresa* in 1886, gives her position at about 125 miles *south-southeast* of the islands. R., 301, line
18.

Reppen states that the vessel he was upon sealed *west, north, east, and south* of the islands. He gives but one distance, and that 150 miles from the Pribilof Islands. R., 310, line
50.

Moss is cited in the Argument on behalf of Great Britain as to the cruise of the *Favourite* in 1886. As the log of the *Favourite* is in evidence, it is of much more value than any statement made by a hunter. The log discloses that the *Favourite* sealed to the *southwest, south, and southeast* of the Pribilof Islands, Br. Arg., 61,
line 13.
As Ex. No. 8
(U. S.).

covering an area extending over 175 miles from east to west.

R., 526, line 55. Raynor, on the *San Diego*, sealed to the south and southeast of the islands.

R., 1728, line 58; 1731, line 47. Meyer, master of the *Vanderbilt* in 1886, stated that he sealed to the eastward, northward, and westward of the Pribilof Islands.

McKiel, master of the *Mary Taylor* in 1887, gives no actual position as to his sealing in that year, although it is stated in the British Argument that he "explains that he worked in the vicinity of 56° north latitude, $177^{\circ} 1'$ west longitude." The testimony of witness was that he sealed from 40 to 100 miles west of a line drawn from Unalaska to the Pribilofs. It would appear that his position was chiefly south-west and south of the Islands, and the area he covered about 60 miles from east to west and over 150 from north to south.

R., 333, line 65. Moss gives the position of the *Kate* in 1887 as south of the Pribilof Islands, and distant 30 or 40 miles therefrom.

R., 526, line 55. Raynor, on the *Allie I. Alger* in 1887, gives his position as south of the Pribilof Islands.

R., 848, line 32. Miner, master of the *Penelope* in 1887, gives his position as southwest of the Islands, and distant over 100 miles therefrom.

R., 1728, line 58; 1731, line 47. Meyer, who is not cited in the Argument on behalf of Great Britain, and who was master of the *Vanderbilt* in 1887, states that he sealed east, north, and west of the Islands.

R., 724, line 10; 728, line 55. W. E. Baker, of the *Viva* in 1888, gives his position as south and west of the Islands, and from 60 to 90 miles distant from them, and adds that he sealed "principally west."

R., 731, line 30. Laughlin McLean, master of the *Favourite* in 1888, gives his position for that year as west and south of the Pribilof Islands.

Hackett, position for miles north

The *Tri* latitude and south of the south, and t

Gerow, sealed in e

Hansen i Britain as s westward o distant; aft was about i in 1888."

Record dis mony, the ticularly t latter part nation sho 1889.

Raynor, warned as Islands.

W. E. I southward distant 60 west.

Laughli lof Islands them.

Folger, he sealed of the Isl

Hackett position fo of the Pr

Hackett, master of the *Annie C. Moore*, gives his position for 1888 (or 1890) at a point about 100 miles *northwest* of the Islands. R., 661, line 64.

The *Triumph*, in 1888, according to the positions of latitude and longitude given by E. C. Baker, sealed *south* of the islands over an area 100 miles *north* and *south*, and the same distance *east* and *west*. R., 702.

Gerow, who hunted in 1888, states that the vessel sealed in *every direction* from the Pribilof Islands. R., 1493, line 22.

Hansen is cited in the Argument on behalf of Great Britain as stating that "he hunted to the southward and westward of the Pribilof Islands, about 60 to 70 miles distant; after that, a little to the east. The direction was about north-northwest of Unimak Pass. This was in 1888." A reference to the marginal citation of the Record discloses an error in this summary of his testimony, the witness in fact stating that he hunted "particularly to the *southward* and *westward*, and in the latter part of the year to the *eastward*." His examination shows also that he was speaking of the year 1889. Br. Arg., 64, line 13.

Raynor, in 1889, gives the position where he was warned as about 100 miles *south* of the Pribilof Islands. R., 528, line 37.

W. E. Baker, of the *Viva* in 1889, sealed mostly *southward* and *westward* of the Pribilof Islands, and distant 60 to 90 miles from them, but principally *west*. R., 724, line 10.
R., 728, line 55.
R., 731, line 40.

Laughlin McLean sealed to the *south* of the Pribilof Islands in 1889, and about 100 miles distant from them.

Folger, master of the *Penelope* in 1889, states that he sealed to the *west* and *east* and *south* and *northwest* of the Islands. R., 1083, line 11.

Hackett, master of the *Annie C. Moore*, gives his position for 1890 (or 1888) about 100 miles *northwest* of the Pribilof Islands. R., 661, line 30.

R., 724, line 10. W. E. Baker, master of the *Viva* in 1890, sealed to the *westward* and *southward* of the Islands, and 90 miles distant, and in the latter part of the season from 40 to 60 miles *east*, in which position he apparently had his best hunting. The extreme points of his cruise are cited in the British Argument as being *150 to 200 miles apart*.

R., 1079, line 60. Steele, master of the *Theresa* in 1890, states that he hunted to the *westward* and *southward* of the Pribilof Islands and near Bogoslof. The extent of the sea covered by him in his seal hunting appears to have been over 200 miles *north* and *south*.

R., 758, line 40. William Cox, master of the *Sapphire*, states that his best seal hunting in 1890 was to the *northward* and *westward* of the Islands, although he "was all over the sea," going 80 or 90 miles *east*.

R., 771, line 37. Capt. William O'Leary, a witness sworn on behalf of Great Britain, states that in 1888 he was *west* of the islands, and that he returned there in 1890, but did not find the seals "so plentiful." He then sealed to the *eastward*.

Captain Miner, a witness sworn on behalf of the United States, testified:

R., 558, line 16. I sealed entirely around the islands.
 Q. You mean *north, south, east, and west*?
 A. Yes, sir.
 Q. How far away from them?
 A. The nearest I was to the islands was 40 miles.

Besides this specific class of testimony there is other of a more general nature. But two references are made in the opposing Argument to this class of testimony; one, an abstract of the evidence of A. B. Alexander, of the United States Fish Commission, which is in substance that Bering Sea during the months of July and August is frequented by the fur seal; the other, a summary of the testimony of Capt. Alexander McLean, stating that his best hunting was about 60 or 70 or even 90 miles from the Pribilof or Aleutian Islands.

Br. Arg., 66,
 line 35.

Br. Arg., 61,
 line 21.

Upon the statement of is found:

Q. Can you tell from the ing season zone?

A. I don't of reference

Q. You k catches of s

A. Yes, s

Q. And y

A. Yes, s some use to

Q. Did y seal the sec

A. The o one place, t

Again, i in the opp examination 170° west was order ground.

Q. Of co ground wo

A. Why

The qu cited. T single sta After the whether limits, to are anyw the *north* towards t

Q. The A. Yes,

Upon the same page in the Record where this statement of Captain McLean's appears the following is found:

Q. Can you in your observation in sealing, from 1883 down, tell from the seasons preceding whether you will in the coming season be able to find seals in any particular place or zone? R., 414, line 33.

A. I don't believe there is any certainty. I kept the book of reference for this reason.

Q. You kept the book of references where you made good catches of sealing?

A. Yes, sir.

Q. And you have been there again in the same places?

A. Yes, sir; placed it on the chart thinking it might be of some use to me, but found it was not.

Q. Did you ever find any rule whereby you could find the seal the second time?

A. The only rule I have found was that if they were not in one place, to go and hunt for them.

Again, in the case of Captain Raynor, there appears in the opposing Argument an extract from his cross-examination to the effect that he was in the position 170° west longitude and 55° north latitude, when he was ordered out of the sea, *because that is a sealing ground*. The extract is closed with the following: Br. Arg., 63, line 25.

Q. Of course, and you went where you knew the sealing ground would be?

A. Why, certainly.

The questions immediately following this are not cited. They are of far more importance than the single statement as to his position when warned. After the answer quoted, Captain Raynor was asked whether the sealing ground was confined to certain limits, to which he replied: "Yes; but those limits are anywhere from the *northeast* of the islands up to the *northwest* of the islands and to the *southward* down towards the Pribilofs." R., 528, line 60.

Q. The Aleutian Islands, you mean?

A. Yes, sir.

Besides these witnesses referred to, Captain Meyer, of the *Vanderbilt*, testified as follows:

R., 1728, line 28. Q. Captain, from your experience in the years 1888 and 1887, do you know of any place in the sea where you can go in one year and find seals and then return in the following year and be sure of finding seals there?

A. No, sir; I do not.

At another place in his examination appears the following:

R., 1728, line 62. Q. And if you found seals in a certain locality in July, could you go back there in August and be sure of finding them?

A. No, sir; I couldn't.

Q. Have you tried it?

A. Yes, sir; I have tried it several times.

R., 1729, line 1. He added that he did not find seals at those places.

R., 1731, line 51. In his cross-examination the witness was asked as to his cruise in 1887, and replied: "Somewhere in the same locality as in other years in search of seals." He was then asked, "You did not try any new ground at all?" to which he answered, "I tried new ground every day."

R., 257, line 29. Owen Thomas, a witness sworn several times on behalf of Great Britain, who had been pilot on the R., 1766, line 30. *Carolena* in the spring of 1886, hunter on the R., 1770, line 20. *Diamond* the same year on her northern trip, mate of R., 1771, line 60. the *Pathfinder* in 1887, master of the *Pathfinder* in R., 1767, line 34. 1888, and master of the *Black Diamond* in 1889, testified in his redirect examination as follows:

R., 1779, line 2. Q. How is it that your catch was limited to about 500 skins in 1888 on the *Pathfinder* in Bering Sea?

A. Well, I could not strike the seals; I could not get amongst them, I suppose.

If the sealing grounds are "well known," as asserted in the Argument on behalf of Great Britain, it is a matter of conjecture how such an experienced sealer, as the witness Thomas claimed to be, could have avoided making a successful voyage.

Cotsford, and afterwards asked, "Do any place of a sure thing he answered place."

Again, re getting seal seals, but t

A. B. Ale an extensiv sealing trip was asked, always be none."

Capt. C. ants, in hi testimony:

Q. How d

A. Scatter

Q. On cer

A. I seld

Captain Britain and

Q. From tell the Com in Bering S

A. No, si

Q. Is the

A. The se

is; whereve

Q. Do th

A. Yes, s

Alexan surface fee tory fish.

Capt. V hunting g

Cotsford, one of the hunters on the *Carolina* in 1886, and afterwards engaged on other sealing vessels, was asked, "Do you think that in Bering Sea there is any place or number of places where you can go as a sure thing, and get seals every year?"—to which he answered: "I do not think there is any sure place." R. 379, line 48.

Again, replying to a question as to the certainty of getting seals, he answered, "It is certain you will get seals, but there is no certainty about the amount." R. 385, line 59.

A. B. Alexander, already referred to, who has had an extensive experience in Bering Sea, and made two sealing trips in those waters for scientific purposes, was asked, "Is there any locality where seals can always be found?" to which he replied, "I know of none." R. 476, line 35.

Capt. C. N. Cox, a witness on behalf of the claimants, in his direct examination, gave the following testimony:

Q. How do you find the seals there?

R., 613, line 15.

A. Scattered about.

Q. On certain grounds?

A. I seldom find them on the same ground.

Captain Folger, who was subpoenaed by Great Britain and the United States, testified as follows:

Q. From your experience in Bering Sea, Captain, will you tell the Commissioners whether or not there is any one place in Bering Sea where you will always find seals? R., 1082, line 68.

A. No, sir; not where you will always find them.

Q. Is there any such place?

A. The seals are everywhere, according to where the food is; wherever the food is, that is where the seals are.

Q. Do they follow the food?

A. Yes, sir.

Alexander stated that the seals are practically surface feeders, and that their food consists of migratory fish. R., 477, line 11.

Capt. W. E. Baker stated that he thought the hunting grounds changed from year to year. In this R., 726, line 38.

connection attention is called to the experience of Captain O'Leary in 1889 and 1890, already cited.

In a statement made before the collector of customs at Victoria in 1892, and which Captain Baker in his examination testified was true, appears the following:

R., 726, line
60.

I have noticed also that they [the seals] ~~change~~ *change* their ground from time to time, and where you find them this year you may not find them the next. This was very remarkable during the year 1890, for the seals were *all found to the eastward* of the Pribilof Islands, while in the former years they were all found to the westward.

With this statement the testimony of Captain William Cox is significant:

R., 758, line
45.

Q. Where did you fish in 1890?

A. I was all over the sea.

Q. Did you go to the westward of the islands?

A. I did, sir.

Q. How far east did you go?

A. About 90 miles.

Q. Did you catch seals there?

A. I did not see any.

Q. In what year?

A. 1890.

Q. You caught none east?

A. None.

When two such prominent witnesses on behalf of the claimants differ so widely as to the locality where seals could be taken in 1890, there is but one conclusion to be drawn, that there is no persistency in the abundance of seals in any sea area even during the same season.

Br. Arg., 60,
line 47.

Alexander Reppen, a witness relied upon by Great Britain in connection with this question of the locality where seals are taken, testified as follows:

R., 309, line
34.

Some days we found lots of seals and some days none.

Q. Right in the same place?

A. At different places. We never stopped in one place all the time.

Q. Are there any particular hunting grounds in the sea? R., 310, line

A. No, sir, I do not think it; wherever you find the seals 46.
you stay.

Capt. Laughlin McLean gave the following testimony:

Q. If you happened to get some seals last year where you R., 332, line
never got any before, would you go there this year? 27.

A. Certainly.

Q. Then you would go where you had good luck; is that it?

A. Well, I would prospect around until I found some seals,
and if I found enough to warrant my staying, I would stop.

Captain Raynor stated that he never in successive R., 524, line
years had found seals in the same place. 6.

From this summary of the evidence it is apparent that the sealing vessels are not confined to any given locality in their hunting voyages, unless an area containing fifteen or twenty thousand square miles can be considered a definite "sealing ground." A reference to the evidence given shows that seals were taken every year, from 1886 to 1890 inclusive, *north, east, and west* of the Pribilof Islands, at distances ranging from 60 to over 200 miles therefrom. The attention of the Commissioners is particularly called to the Townsend chart for 1894, and the "sealing" chart, No. 4, of the case of the United States at Paris, both of which were placed in evidence by Great Britain. The testimony and the charts demonstrate that the area where seals are hunted in Bering Sea extends from 165° to 175° *west* longitude, and from 53° to 59° *north* latitude, containing from 140,000 to 150,000 square miles, *equal in area approximately to the North Sea.*

The Argument on behalf of Great Britain sums up Br. Arg., 65,
the evidence relied upon in the following words: line 7.

Having established that the sealing grounds in Bering Sea are well known and *easily defined*, it is proposed to point how plentiful the seals were in those sealing grounds.

It is as fitting to term the entire expanse of the North Sea a "fishing ground" as it is to term these waters "sealing grounds;" and it is a significant fact that Great Britain fails to define the assumed locality of seal abundance.

The second portion of this part of the Argument under consideration deals with the abundance of seals in this area of 140,000 to 150,000 square miles.

During the morning session of the High Commission on December 2, 1896, there was read into the record on behalf of Great Britain a deposition of J. H. Douglass, the revenue-marine pilot, already referred to. In that appears the statement which is quoted in the British Argument showing that the seals "are at all times very plenty between Unimak Pass and said Islands, in a track about thirty miles wide, which seems to be their highway to and from the Islands."

Br. Arg., 65,
line 32.

The picture of a "stream of seals" 30 miles wide, extending through Unimak Pass, and thence for 180 miles to the Pribilof Islands, suggests many possibilities and certainties attendant upon the occupation of seal hunting. If such a condition existed in reality in 1886, or at any time, it can not be understood why it was necessary for the sealing vessels to ever enter the disputed waters of Bering Sea. Lying-to, at the entrance of the Pass, their boats, with short intervals between them, extending like a chain from shore to shore, it seems as if the avarice of the sealer and his exaggerated ideas of profit might have been fully realized in the slaughter of the migrating animals. The fact is that this has never occurred in the history of pelagic sealing, and that no vessel has ever hunted in Unimak Pass.

That this deposition is suitable, authentic evidence, such as should receive consideration by this High Commission, is denied by the United States.

Two weeks after this deposition was offered in evi-

dence, in the
ence N. Co.

Q. Do seal
A. I have

Q. As a m
here and the

A. Yes, si
Q. Coming

a herd toget
August, and

A. Never
Q. How d

A. Scatter
Q. On cer

A. I seldo
Q. How m

A. Three
Q. And t

the pelagic
Bering Sea?

A. Not in
Q. Do yo

coast?
A. Yes, si

Q. When
A. On the

Q. And t
twenty-five

apply to Be
A. No, si

Q. Did yo
five seals cl

A. No, si
Q. You m

A. Yes, s

The pos

metrically

deposition

the time o

cluding th

no more e

Britain to c

reference i

dence, in the redirect examination of the witness Clarence N. Cox, the following questions were asked:

Q. Do seals herd together, as Mr. Warren suggests? R., 613, line 1.

A. I have never seen them that way.

Q. As a matter of fact, are the seals you get scattered about here and there?

A. Yes, sir.

Q. Coming back to the point about the seals being all in R., 613, line 12, a herd together, is that the case at all in the months of July, August, and September?

A. Never in that way.

Q. How do you find the seals then?

A. Scattered about.

Q. On certain grounds?

A. I seldom find them on the same grounds.

Q. How many will you find together as a rule?

A. Three or four; two; very often one.

Q. And this idea of large herds, with watchmen to keep the pelagic sealer off, is there anything of that kind in Bering Sea?

A. Not in my experience.

Q. Do you find them in larger bodies on the southern coast?

A. Yes, sir.

Q. When they are coming up to the sea?

A. On the southern coast we find them in larger bodies.

Q. And the remark you have made when asked about twenty-five seals together, and that sort of thing, does that apply to Bering Sea?

A. No, sir.

Q. Did you ever meet a mass containing as many as twenty-five seals close together in Bering Sea?

A. No, sir.

Q. You meet them in scattered numbers?

A. Yes, sir.

The position here assumed by Great Britain is diametrically opposed to that taken when the Douglass deposition was urged upon the Commissioners. From the time of the examination of Cox, up to and including the last day of the session, on February 2, no more evidence was offered on the part of Great Britain to establish this "stream of seals," and no other reference is made to it until it appears again at this time

in the Argument. But few references to the Record need be made to show there is no evidence to sustain the position assumed anew by Great Britain, as the citations which are relied on in the Argument in no particular sustain the opinion of the witness Douglass or help to establish the contention that there is any well-defined locality where seals are found in such abundance as to insure a certainty of profitable hunting.

R., 310, line
50.

The witness, Alexander Reppen, called on behalf of Great Britain, states that the seals are no thicker in one quarter than in another; that it just happens that a schooner runs across a number of seals and stays there for awhile, and that she then goes 60 or 70 miles in another direction, where, lying-to, she sends out her canoes and stays there a day, and, if the seals are thick, two days, and sometimes more; and then, picking up the canoes, the vessel moves off 60 or 100 miles in another direction, covering the whole sea about the islands.

The witness, Charles E. Raynor, testified as follows:

R., 535, line
5.

Q. In looking for seals out there, you have to take your vessel around the various parts of the sea to come across a bunch of seals?

A. Yes.

Q. You do not hunt seals in herds, do you—they are found in small bunches, are they not?

A. Mostly, I find them by two or three at a time.

Q. There is no such thing as running across thousands of seals and being able to kill any number of them in a short time?

A. No, sir; I never found it so.

The witness Clarence N. Cox, already referred to, gave the following testimony:

R., 608, line
45.

Q. You don't want to be understood as testifying that boats go out into a large herd of seals and catch them right and left?

A. No, sir.

Q. They take them up separately?

A. Yes, on

Q. The ca

Which do yo

A. I have

Q. They ci

seal sleeping

doing, they k

A. Yes, sir

Q. Then th

A. Yes, sir

Further

ments on th

High Comr

deny that t

territorial v

the Pribilo

all times ab

basis for ca

that within

square mile

summer mo

ing their fo

time conter

seals are so

Pribilof Isl

may be su

catch.

A. Yes, one and two together—three.

Q. The canoes or boats, whichever you may be using. Which do you use?

A. I have had canoes since 1892.

Q. They circulate about the boat, and when they find a seal sleeping, traveling, or breaching, whatever he may be doing, they kill him?

A. Yes, sir.

Q. Then they go searching for another?

A. Yes, sir.

Further reference, in view of the foregoing statements on the part of the witnesses sworn before the High Commission seems useless. The United States deny that there exists in Bering Sea, except within the territorial waters of the United States surrounding the Pribilof Islands, any locality, where seals are at all times abundant, of such limited extent as to form a basis for calculating a probable catch. They admit that within an area, including from 140,000 to 150,000 square miles of open sea, seals are found during the summer months and that they are killed while seeking their food over this expanse of waters, at the same time contending that this large area over which the seals are scattered, *north, east, south, and west* from the Pribilof Islands, forms no basis for any formula which may be suggested for the computation of a possible catch.

DURATION OF THE SEALING SEASON IN BERING SEA

The case of the United States in answer to the claim for damages, measured by the uncertain and estimated results of a prospective catch, is confidently rested on the citation of authorities universally holding that this basis for determining and awarding damages is too uncertain and speculative to be accepted; and upon the testimony in the Record bearing upon the obstacles offered by nature and the unsurmountable difficulties encountered in the business of seal hunting, which render the ascertainment of a just basis for calculating future earnings of seal hunters absolutely impossible.

The claim advanced as to the duration of the sealing season in Bering Sea, in the Argument on behalf of Great Britain, however, bears upon the time that the owners of the vessels, warned from continuing their voyages and not seized and condemned, were deprived of the use of their ships. The extracts and citations of testimony from the Record and the conclusions drawn therefrom in the British Argument, relative to the sealing season, are violently at war, the one with the other. The voyages of many of the vessels are shown in the extracts from the evidence, carefully collected, to have terminated between the 20th and 25th day of August, but the conclusion is drawn that the season extended "well into September."

Again, at page 69 of the Argument, line 20, a statement is made of the latest voyages that the records show ever were made in Bering Sea, and made, it is worthy of note, during the year 1890, a year not

directly in
date for the
named in the
out of six
September
were stopp
which the
sion, howe
that the ha
prevailing
ing to ear
of Septemb
their catch

Without
any witness
made, and
to, the fin
"determin
tinued se
weather pr
the end of
to accomp

The su
termination
dation in
September
time. In
Argument
ment, 153
month of
September
expanded

The Un
the Record
the latest
profit in 1

No evid
ants beari

directly involved in this controversy. The average date for the termination of the voyages of the vessels named in this statement, which excludes nine vessels out of sixteen which were in the sea that year, is September 5. The days that hunting operations were stopped is not given, only the days upon which the various vessels *left* the sea. The conclusion, however, is drawn: "It is therefore established that the habits of the seals and the weather ordinarily prevailing would permit the vessels engaged in sealing to carry on operations until well into the month of September, if it was necessary, in order to complete their catch."

Without citing from the Record the testimony of any witness showing that a longer voyage was ever made, and in fact no such testimony could be referred to, the final conclusion is drawn that it has been "determined that they would in each case have continued sealing under the favorable conditions of British Arg.,
p. 74.
weather proved to have been existing until as near the end of September as would have been necessary to accomplish a satisfactory catch."

The supposition might fairly be made that the termination of the sealing season, without any foundation in evidence being fixed "as near the end of September," would not be again removed to a later time. In the statements appended to the *Triumph*, Argument, 148; *Ariel*, Argument, 151; *Kate*, Argument, 153, these elastic phrases, "until well into the month of September" and "until as near the end of September as would have been necessary," are expanded to October 1.

The United States contend that the testimony in the Record definitely fixes August 20 to August 25 as the latest time seal hunting could be carried on with profit in 1886, 1887, 1888, and 1889.

No evidence was adduced on behalf of the claimants bearing upon the duration of the season, except

in the indirect way of examining witnesses as to the time for which a vessel was *outfitted*.

The answer to a question of that nature furnishes no definite information as to the last day that hunting was carried on, and includes the time required to make the voyage out of the sea and thence down the coast to Victoria.

All the testimony in the Record relating to the duration of the hunting season in Bering Sea given by captains, mates, or hunters on vessels whose voyages were not interrupted or interfered with, is contained or referred to in this portion of the Argument.

R., 230, line 8. The hunting of seals in Bering Sea began in the year 1886. Captain Warren testified, "1886 was the first year then of any note in Bering Sea." The evidence does not refer to more than a half dozen vessels which entered Bering Sea prior to that year, and none of them sailed from Victoria.

Arg. on behalf of G. The Argument on behalf of Great Britain, concerning "Method for computing the estimated catch," line 16. contains the statement:

R., 252. It is contended by Great Britain that in 1886 the *Mary Ellen* is the only vessel of which it can be stated with certainty that she completed her voyage without interference of any kind.

Exh. 27, G. William T. Bragg, called on behalf of Great Britain, was examined relative to the voyage of the *Mary Ellen* in 1886. He gave a detailed statement of the catch. The last hunting day was *August 24*.

R., 266, line 28.

On cross-examination, he said:

Q. The *24th of August* was practically the close of the sealing that year in Bering Sea, was it?

A. It was the close of our sealing.

Q. Did you come away earlier that year than others, or did you stay the ordinary limit of the sealing season?

A. That was the ordinary limit *at that time*.

Q. And in 1887 it was about the limit?

A. About the limit in 1887.

Q. Why d
August, 1886

A. Well,
commences t
latter part o
wester about

Q. And w
September t

A. I neve

Q. And y
that late in

A. No, I

Q. I belie
long as you
of any seizu

A. Not th

Andrew

Britain and

mission, te

Sayward, 1

day that t

hunting se

Emile H

relative to

1886, said

Q. And h

A. If I re

Q. Why

A. I don't

On cross

Q. When

A. What

Q. In 188

A. Well,

probably a

Q. Then

A. The v

wasn't very

Alexan

Britain, te

Q. Did y

A. About

Q. Why did the season close on or about the 24th of August, 1886 and 1887?

A. Well, coming on the 1st of September the weather commences to get bad. The northwesterners set in about the latter part of August, and, as a rule, they take the first northwesterner about the last of August and steer for home.

Q. And when they talk about the season extending into September they do not speak of the years 1886 and 1887?

A. I never remained in there that late.

Q. And you never knew anyone else to remain in there that late in those years?

A. No, I did not.

Q. I believe you said that you stayed in Bering Sea as long as you desired, and that you did not come out because of any seizures in 1886? R., 267, line 54.

A. Not that I was aware of.

Andrew D. Laing, examined on behalf of Great Britain and himself a claimant before this High Commission, testified relative to the voyage of the *W. P. Sayward*, 1886, and said that August 24 was the last day that the boats were lowered for the purpose of hunting seals. R., 270.

Emile Ramlase, called on behalf of Great Britain, relative to the catch of the *Theresa* in Bering Sea in 1886, said: R., 299, line 17.

Q. And how long did you remain in the sea sealing?

A. If I remember right, we left on the 25th of August.

Q. Why did you leave on the 25th of August?

A. I don't know. I suppose that was the end of the trip.

On cross-examination, witness said: R., 300, line 47.

Q. When did you stop sealing in August?

A. What year?

Q. In 1886?

A. Well, as near as I can remember, a few days before that, probably a couple of days.

Q. Then you left on account of what?

A. The vessel wasn't fitted out for a long cruise; she wasn't very well provisioned going home?

Alexander Reppen, called on behalf of Great Britain, testified that he was on the *Grace* in 1886: R., 306, line 62.

Q. Did your sealing end about the 10th of August?

A. About that I think.

- R., 311, line 52. Q. You went out of the sea on the 15th of August?
 A. Yes.
 Q. You stated that you were there several days waiting for good weather, did you not?
 A. Yes.
 Q. And the good weather did not come?
 A. No.
 Q. So you went out of the sea?
 A. Yes.
 Q. Was the bad weather that season the reason why you left the sea?
 A. Yes.

Reppen was the only witness called who was aboard the *Grace* in 1886, and his evidence outweighs the general statement of Capt. Warren that his vessels were outfitted for a voyage until the end of September.

- R., 377, line 16. John Cotsford, called on behalf of the United States, relative to the voyage of the *Carolena* in 1886, said:

Q. Do you know anything about what the time Captain Oglevie, or did you hear anything about the time he was preparing to leave the sea?

A. Somewhere about the 20th or 23rd of August, I believe. (Captain Oglevie had told him.)

- British Agr., p. 69, line 40. James Munger, called on behalf of Great Britain, relative to the voyage of the *Carolena* in 1886, is cited in the British argument as saying:

In the sea the captain talked of going home about the end of the month (of August).

- R., 636, line 33. Cross-examined, this witness said:

Q. Will you swear whether they said "about the end of the month" or "the 20th of August?"

A. No.

Q. You could not say which?

A. No; not as to date.

- R., 1728, line 16. Peter C. Meyer, called on behalf of the United States, testifying relative to the voyage of the *Vanderbilt* in the years 1886, 1887, and 1888, said:

Q. How did you find the sealing between August 20th and the end of August?

A. From

Q. Yes.

A. Well,

pay in stayi

Q. What

A. I was

gave it a tri

Q. In you

good sealing

A. No, si

The wit

20th and

position to

Capt. W

a witness c

Q. How l

did you exp

A. I inte

The wit

6; conseq

year in th

Captain

voyage of

Q. For h

you expect

A. I exp

September.

Q. As a

A. I left

The wi

to testify

latter par

Exhibit

discloses t

the 24th

the 29th,

making r

sage of

Sea. De

even the

A. From the 20th of August to the end of the month?

Q. Yes.

A. Well, I didn't find much in it. There was not much pay in staying that time.

Q. What did you stay for?

A. I was there to give it a trial, and I stayed there and gave it a trial, but I found it didn't pay me.

Q. In your experience in 1886 and 1887, you did not find good sealing between the 20th and 31st of August?

A. No, sir; it was not good sealing weather.

The witness had been in Bering Sea between the 20th and 31st of August in 1886; therefore was in a position to testify concerning the actual conditions. R., 1727, line 58.

Capt. Wm. O'Leary, master of the *Pathfinder* in 1886, R., 292, line 44. a witness called on behalf of the claimants, testified:

Q. How long were you provisioned to stay and how long did you expect to stay in the sea when you went there?

A. I intended to stay until about the first of September.

The witness then testified that he did leave August 6; consequently he had no actual experience that year in the sea after the 6th of August.

Captain O'Leary was examined relative to the voyage of the *Pathfinder* in 1887: R., 293, line 40.

Q. For how long were you provisioned and what time did you expect to stay there?

A. I expected to stay until September—about the 1st of September.

Q. As a matter of fact, how long did you stay in the sea?

A. I left on the 17th of August.

The witness, therefore, was again not in a position to testify as to the actual conditions existing in the latter part of August.

Exhibit 27, G. B. Claim No. 1, Exhibits, page 43, discloses that, although the *Mary Ellen* ceased hunting the 24th of August, she did not leave the sea until the 29th, the intervening time being employed in making ready for her return voyage and in the passage of the Pass, through which she left Bering Sea. Deducting five days from September 1, and even the testimony of Captain O'Leary regarding

what he *intended* fixes the close of the hunting season as *August 25*.

R., 770, line
43.

This witness was examined relative to a voyage in *Walter L. Rich* in 1890:

Q. How late in August did you leave?

A. About the 25th of August, as far as I remember.

Q. You never were in there later than the *25th of August*?

A. I do not think so; that was the last year I was in the Bering Sea.

This witness, who was one of the captains employed by the claimant, William Munsie, between the years 1886 and 1890, was never in Bering Sea later than the 25th of August. Deducting the usual time required to make the voyage from the place where the vessel chanced to be sealing to the Pass through which she would leave the sea and hunting operations would cease, according to his testimony, about the *20th of August*.

Captain James D. Warren, who managed the largest fleet of vessels in Bering Sea in 1886, examined on behalf of the claimant, is cited in the British Argument, page 70, in support of the contention that the sealing season in the year 1886 extended to the end of September:

R., 908, line
66.

Q. In 1886, taking the supplies you had on the vessels you have mentioned, how long did you arrange for the cruise, a cruise of the various vessels in your fleet?

A. My intention was to have stayed in the sea until about the end of September.

This witness might reasonably be expected, when the general character of these claims is considered, to testify to a prolonged hunting season, but irrespective of his prejudices, the fact is disclosed by the record that he was never in Bering Sea after the 20th of August, and that the captains sailing the schooners of the fleet in the year 1886 all stopped hunting before the 25th of August.

Laing, of the *Sayward*, managed by Warren, states the last sealing day was *August 24*.

Alexander
her sealing
she was in
weather.

Captain
to the fleet

Q. So that
fitted until

A. I am not
when I left

Q. And you

A. Well, the
Sea. These

board to keep

Q. How long

A. As long as

Q. Did you

1886?
A. I did.

Q. And you

A. Yes, sir.

Q. How long

A. Until the

and came to

The captain

positively

as his reason

theirs upon

be given to

The witness

testified:

Q. Now, the

A. In the

Q. Did you

ing Sea to

A. In the

there was

Q. You

A. The

Q. Can

Bering Sea

A. I don't

Alexander Reppen testified that the *Grace* ceased her sealing voyage on the 15th of August, and that she was not warned but stopped because of bad weather.

Captain Olsen, sailing the *Anna Beck*, belonging to the fleet managed by Warren in 1886, testified:

Q. So that you would not be positive that you were outfitted until the 1st September?

A. I am positive that I was outfitted until 1st September when I left the west coast.

Q. And you made arrangements to hunt until what time?

A. Well, as long as I thought fit to stay in the Bering Sea. These were my orders. I had enough supplies on board to keep me there until the beginning of September.

Q. How long were you instructed to stay there?

A. As long as I thought reasonable to get skins.

Q. Did you fit out this same vessel the year before, viz, 1886?

A. I did.

Q. And you fitted her out in the same way?

A. Yes, sir.

Q. How long did you remain in the sea in 1886?

A. Until the 19th August, and then I started for the pass and came through on the 21st.

The captains on three of the vessels of this fleet positively contradict Captain Warren, and inasmuch as his testimony was based upon a supposition and theirs upon actual experience, but little weight is to be given to his statement.

The witness himself, however, on cross-examination, testified:

Q. Now, you say your schooners were all fitted out to leave the sea at the end of September?

A. In that neighborhood.

Q. Did you ever know a sealing vessel that stayed in Bering Sea to the end of September in those years?

A. In them years I don't think I do, and I think likely there was vessels in before—

Q. You did not begin to enter Bering Sea until 1886?

A. The Victorians did not, as a rule.

Q. Can you tell me of a single vessel that remained in Bering Sea in 1886 or 1887 as late as September?

A. I don't know as I know of one.

Q. You were first in Bering Sea in 1886?

A. In 1886.

Q. What was the usual time for leaving Bering Sea of the whole of the sealing fleet?

A. We were commencing at that time; I intended to have stopped in until the end of September.

Q. Have you learned since by experience that there is no sealing to be had after the 25th of August?

A. Yes, sir.

R., 403, line
57.

Captain Alexander McLean, sailing the *Favourite*, closed his hunting season in 1883 on the 10th of August; in 1885 on the 23d of August, and in 1886 on the 19th of August. He produced the original log books of his voyage for those years, and the entries confirmed his testimony. The logs are on file as exhibits and can be inspected.

This testimony is all the testimony in the record bearing upon the duration of the sealing season in Bering Sea in the year 1886, which was given by captains who were actually there and whose voyages were not interrupted. Only one of these vessels was warned, and Captain McLean, commanding that vessel, the *Favourite*, testified that he did not leave the sea because of the warning, but stopped hunting on the 19th of August because the season was closed.

TESTIMONY RELATING TO DURATION OF SEASON OF 1887.

R., 403, line
58.

Captain Alexander McLean, sailing the *Mary Ellen* stopped hunting on the 19th day of August.

R., 1247, line
61.

Captain Charles E. Raynor states that he made ready to leave the sea on the 24th of August, 1887, on the *Allie I. Alger*.

R., 730, line
65.

Captain Laughlin McLean, a witness on behalf of Great Britain, testified:

Q. When did you leave Bering Sea?

A. I will have to refer to my books [examining memorandum]. In 1887 my last sealing day was the 27th of August, and I came out through the pass on the 5th of September.

The deta
in 1887 sh
sealing day
last day of

Captain
of the Uni
ages in B
captain an
last day he

Captain
of the Uni
day in 18
remained i
mable to le

Alexand
Diamond i
15th of A

Captain
1887, "th
date "som

Examin
August or
day or so

THE TEST

Emile
ain relati
Bering S

Q. Wha
A. Abou
of the dat

Q. Very
A. It m
finished ou

Q. Wer
A. No,

E. Cro
and a wi

The detailed statement of the catch of the *Favourite* R., 732, line 2, in 1887 shows that the 26th of August was the last sealing day, the witness stating, "and the 26th is the last day of sealing."

Captain Albert Folger, a witness called on behalf R., 1082, line 58. of the United States, examined relative to his voyages in Bering Sea, testified that he was a sealing captain and that he resided at Victoria, and that the last day he sealed in 1887 was the "19th of August."

Captain Peter C. Meyer, a witness called on behalf R., 1727, line 56. of the United States, testified that his last lowering day in 1887 was on the 29th of August; that he remained in the sea until the 11th of September, and was unable to lower his boats in the meantime.

Alexander Reppen testified that he was on the *Black Diamond* R., 1384, line 5. in 1887, and that she left the sea on the 15th of August.

Captain Moss testified that the *Kate* left the sea in R., 335, line 47. 1887, "the latter part of August," and later fixed the date "somewhere about the 20th or 24th or 25th." R., 341, line 1

Examined again as to the date, he testified "20th of R., 1389, line 60. August or a little later. I do not remember as to a day or so."

THE TESTIMONY RELATIVE TO THE CLOSE OF THE SEALING SEASON IN 1888.

Emile Ramlase, examined on behalf of Great Brit- R., 623, line 40. ain relative to the voyage of the *Annie C. Moore* in Bering Sea in 1888, said:

Q. What time did you leave?

A. About the 20th of August, I believe. I am not certain R., 623, line 50. of the date, though.

Q. Very near the 20th?

A. It must have been very near the 20th, because we had finished our sealing season.

Q. Were you warned out in 1888?

A. No, sir.

E. Crow Baker, the owner of the *Triumph* in 1888, and a witness sworn on his own behalf, testified rela-

R., 702, line 42. tive to the voyage of the *Triumph* in 1888, and gave a detailed statement of the catch in Bering Sea. The last lowering day was the 20th of August. The last lowering day before that date was the 14th of August.

R., 730, line 66. Captain Laughlin McLean, testifying relative to the voyage of the *Favourite* in 1888 on behalf of the claimants, said "(referring to memorandum): 8th of July I entered Bering Sea; 3d of September I left the sea. My last sealing day was the 27th of August." The reason he left: "The weather was bad."

R., 1082, line 57. Captain Albert Folger, of the *Maggie Mac*, testified that his last sealing day in 1888 in Bering Sea was the 24th of August.

R., 1078, line 20. Captain John Steele was sealing in 1888. "The first strong gales that set in from the northwest after the 20th August we generally left for home."

R., 1727, line 13. Captain Peter C. Meyer testified that he was master of the schooner *Vanderbilt* in 1888, and that sealing did not pay after the 20th of August.

R., 408, line 59. Captain Alexander McLean, sailing the *Mary Ellen*, in 1888 stopped hunting on the 19th day of August.

R., 677, line 8. William J. Goudie, called on behalf of Great Britain, testified that the 28th of August was the last hunting day of the *Edward Welch*. Although the vessel did not go out until the 7th of September, the boats were not lowered in the meantime.

R., 659, line 62. Captain Charles Hackett, called on behalf of Great Britain, examined relative to the voyage of the *Annie C. Moore* in 1888, testified that he left the sea the 22nd of August, and that he was not afraid of seizure.

R., 1447, line 46. Captain Victor Jacobsen, a claimant before the High Commission, is cited in the Argument on behalf of Great Britain on the duration of the season, and the statement is made that he "also remained in the sea in 1888 until the 7th of September without difficulty."

He was cross-examined relative to the voyage:

Q. I am talking after the 3rd of August.

A. We were last. We left the sea, and sealed after we came out or before.

Q. You put the 3rd of September.

A. Out in the sea, and then we came out.

Q. You look at the 3rd of September.

A. Yes; I do.

This witness testified after the 21st of August, and that the seals.

Captain of Great Britain remained in the sea.

The witness testified that the 27th of August, but two seals of August.

Q. And, on 8, 16, 23, and on those days.

A. No, sir.

According to that voyage.

Captain left the sea, examined because he after the Herma-

ain, said the 25th

Q. I am talking about whether you are certain you hunted after the 3rd of September.

A. We went out through the pass, but we hunted to the last. We left the sealing ground on the 3rd of September in the sea, and went and filled water, and we lowered and sealed after we filled water and come out, the same day we come out or the day before.

Q. You practically abandoned your hunting then on the 3rd of September?

A. Out in the sea, I suppose. We come and filled water and then we hunted after that.

Q. You lowered in the pass?

A. Yes; lowered inside the Pass.

This witness said that he came out in the year 1890 on the 21st of August; that he was not afraid of seizure, and that he came out because he had enough seals. R., 1448, line 61.

Captain Baker is cited in the Argument on behalf of Great Britain. The statement is made that he remained in the sea until the 2nd of September. Arg. G. B., p. 67, line 37.

The witness being asked to give a detailed statement of the catch of his vessel in the month of August, 1888, gave the statement which shows that after the 27th of August he did not lower the boats, and took but two seals after that date, one of them on the 30th of August and the other on the 2nd of September. R., 7219, line 62.

Q. And, for instance, I think you stated that on August 8, 16, 23, and 30th and September 2nd you only took one seal on those days. Would those be lowering days? R., 7273, line 61.

A. No, sir.

Accordingly, the close of the hunting season for that voyage was August 27th.

Captain Clark, of the *Juanita*, testified that he left the sea August 20, 1888. Recalled for further examination, he stated that the reason he left was because he did not know but there might be seizures after the 20th of August. R., 1119, line 64.

Herman Smith, testifying on behalf of Great Britain, said the *Black Diamond* left the sea in 1888 on the 25th of August. R., 1485, line 63.

The testimony of all the witnesses clearly establishes that but one vessel had ever remained in Bering Sea, prior to the year 1889, into the month of September.

In the claims as presented in the Argument damages for interrupted voyages which would have been extended until the 15th of September are asked.

The *Mountain Chief*, sailed by Captain Jacobsen, was the vessel that alone of all the sealing fleet in Bering Sea in the years 1886, 1887, and 1888 took a seal in September. The testimony of Captain Jacobsen has been cited where he stated that "We left the sealing ground on the 3rd of September in the sea." He does not state what day he lowered last in the sea, leaving this to conjecture.

Inasmuch as the testimony of the other witnesses abundantly establishes the fact that no other vessel lowered its boats in the month of September, the presumption, amounting almost to a positive conclusion, is that Captain Jacobsen did not lower his boats from the *Mountain Chief* in September in the sea. Against the positive statement of the other witnesses as to the close of the hunting season, and against the experience of so many other sealing captains, this one case of the continuation of hunting to the 3rd of September surely does not warrant the conclusion that the 15th of September was the limit of the season.

TESTIMONY RELATING TO DURATION OF SEASON OF 1889.

R., 658, line 46. Captain Charles Hackett, a witness on behalf of Great Britain, testified that he left the sea in the *Annie C. Moore* in 1889 on the 22nd of August; that it was not favorable weather for sealing between the 16th and 22nd, and that he stopped hunting the 16th of August.

R., 651, line 24. Thomas H. Brown, witness called on behalf of Great Britain, testified that the last lowering day of the vessel that he was on in 1889 was the 25th of August.

Captain I
sealing seas
a witness c
that the las
the 21st of

Captain
sailing the
last day he
few days la
seizure, but

Albert F
testified tha
she did not
ness did no

Captain
the last da
gust.

Captain
in 1889, an

The first s
the 20th of 2

The late
of August i

Captain
stopped hu

Wm. T.
testified th
day of the

Wm. J.
Britain, st
until some

a raid on
ing day fo
the 20th a

Captain
middle of
as the re
Indians;

Captain Baker, cited as authority on duration of the sealing season, in the Argument of Great Britain, and ^{R., 719, line 5.} a witness called on behalf of Great Britain, testified that the last hunting day in Bering Sea in 1889 was the *21st of August*. He sailed the *Viva*.

Captain Laughlin McLean testified that he was ^{R., 736, line 42.} sailing the *Favourite* in the year 1889 and that the last day he sealed was the *25th of August*. He left a few days later. He did not leave because of fear of seizure, but because he "wanted to go home."

Albert Bissett, called on behalf of Great Britain, testified that he was on the *Theresa* in 1889 and that ^{R., 776, line 14.} she did not leave until the *3rd of September*. The witness did not know the last lowering day.

Captain Albert Folger, of *Penelope*, testified that ^{R., 1082, line 60.} the last day he sealed in 1889 was the *19th of August*. ^{R., 1082, line 65.}

Captain John Steele testified that he was in the sea ^{R., 1078, line 58.} in 1889, and stated:

The first strong gales that set in from the northwest after the *20th of August* we generally left for home.

The latest he was ever in Bering Sea was the *29th of August* in 1890.

Captain Alexander McLean, sailing the *Mary Ellen*, ^{R., 403, line 58.} stopped hunting the *25th of August* in 1889.

Wm. T. Bragg, called on behalf of Great Britain, testified that the *25th of August* was the last lowering day of the *Maggie Mac* in the year 1889. ^{R., 765, line 55.}

Wm. J. Goudie, witness called on behalf of Great Britain, stated that his vessel stayed in the sea until some time in October for the purpose of making ^{R., 678, line 5.} a raid on the Pribilof Islands, but that the last lowering day for the purpose of seal hunting was between the *20th and 25th of August*.

Captain Hansen testified that he left Bering Sea the *middle of August* on the *Adele*. He afterwards stated ^{R., 615, line 45.} as the reason that he could do nothing with his Indians; that "they would not hunt any more."

242 DURATION OF THE SEALING SEASON IN BERING SEA.

R., 557, line 58. Captain Miner testified that he left the sea in 1889 "the latter part of August."

This testimony of the witnesses relative to their actual experience in the year 1889 establishes that there was not a vessel in Bering Sea in September, 1889, for the purpose of sealing, and yet in some instances the claim is made for the sealing season extending until the 1st of October.

The testimony relied upon to thus extend the duration of the voyages of these vessels which were interrupted by the cruisers of the United States relates entirely to the year 1890. There are no claims before this High Commission for vessels warned in the year 1890, and the testimony relating to that year is remote when used for the purpose of establishing the duration of the season of 1889.

Considering the testimony of *all* the witnesses relating to the voyages of vessels in 1890, the weight of testimony supports the statements made relative to the duration of the season in former years.

R., 665, line 38. Captain Victor Jacobsen testified that the last day of hunting in 1890 was the *21st of August*. He sailed the *Minnie*.

R., 658, line 58. Captain Chas. Hackett, a witness on behalf of Great Britain, of the *Annie C. Moore*, said that he gave up sealing on the *11th of August*, and that he stopped on account of bad weather.

R., 606, line 31. Captain Clarence Cox, master of the *Triumph* in 1890, testified that the *19th of August* was the last day he hunted in that year.

R., 558, line 38. Captain Miner, commanding the *Allie I. Alger* in 1890, testified that he left "along the first part of September."

R., 751, line 8. Captain Laughlin McLean, commanding the *Favourite* in 1890, testified that the last day he lowered was the *14th of August*, and stated that the weather was generally worse in the last part of August than it was in July or the first of August.

R., 754, line 10.

DURA

Captain
the 29th of
ing Sea, and
in that year
Captain
the last sea
August.

Captain
the year 18
about the 2

Theodor
Lion:

Q. And w
A. I left i
Q. So tha
A. I think
Q. Was t
A. Septem
Q. In fact
in August?
A. Yes;
was too stor
Q. So tha
September
thing about
A. Oh, n

This w
Britain as
States. F
for the pu
to the cat
No witness
ever asked
son. Thi
Minnie at
a witness
the *Mim*
of Victori
Captain
Great Bri

Captain John Steele, of the *Theresa*, testified that R., 1078, line 40.
the 29th of August was the latest he was ever in Bering Sea, and that was the year 1890. His last sealing in that year was on the 28th day of August. R., 1078, line 42.

Captain Albert Folger, of the *Penelope*, testified that R., 1083, line 59.
the last sealing day in 1890 was about the 26th of August.

Captain Frederick Paine, of the *W. P. Sayward*, in the year 1890, testified that the last lowering day was about the 28th of August. R., 1725, line 13.

Theodore Magnesen said of the voyage of the *Sea Lion*: R., 1004, line 16.

Q. And when did you leave the sea in September?

A. I left it on the 14th.

Q. So that from the first to the 14th you caught 300 seals?

A. I think so; pretty near.

Q. Was there pretty good weather in September?

A. September was fine, the first part of September.

Q. In fact you did better work in September than you did in August?

A. Yes; I did nothing in August, nor in July, either. It was too stormy.

Q. So that these people who tell us you can not fish in September on account of the weather, they don't know anything about it, do they, Captain?

A. Oh, no; you can get lots of seals in September.

This witness is cited in the Argument for Great Britain as a witness called on behalf of the United States. He was called on behalf of the United States for the purpose of ascertaining information relative to the catch and the duration of the sealing season. No witness examined on behalf of Great Britain was ever asked regarding the duration of the sealing season. This witness, however, was the mate of the *Minnie* at the time of her seizure and was afterwards a witness on behalf of Great Britain in the claim of the *Minnie*, and was a sealing captain out of the port of Victoria.

Captain Robert E. McKeil, a witness on behalf of Great Britain, testified relative to the voyage of the R., 672, line 42.

E. B. Marvin in 1890, and said that the last day of hunting was the 30th or 31st of August.

R., 711, line 4. Captain Louis Olsen testified that the *Juanita* left the sea "the 2nd of September." He could not state the last hunting day.

R., 723, line 48. Captain W. E. Baker testified relative to the voyage of the *Viva* in the year 1890, stating that he took seals eight days in September; that he remained in the sea and that his last sealing day was the 12th of September.

R., 1940, line 34. Captain Siewerd, whose testimony was not taken in court, but whose statement was taken, said that he left the sea on the 6th of September, in 1890.

R., 770, line 35. William O'Leary, testifying relative to the voyage of the *Walter L. Rich*, in 1890, said that he left the sea "some time towards the end of August," and added that he did not think he was ever in Bering Sea later than the 25th of August.

R., 677, line 43. William G. Goudie, testifying relative to the voyage of the *Sapphire*, in 1890, said that they left the sea on the 17th or 18th of August. Captain Cox testified he left August 15th.

R., 1486, line 40. Herman Smith, testifying in behalf of Great Britain, said that he was on the *Katherine* in 1890, and left the sea on the 31st of August.

R., 616, line 47. Gustave Hansen, master of the *Adele*, testified that he left the sea the 12th of August.

The testimony shows that but three vessels actually sealed in Bering Sea in the month of September, during the entire period from 1886 to 1890, inclusive. These three vessels are the *Mountain Chief*, in 1888, which took sixty seals in the Pass, a place in which the Record discloses the boats of no other vessel were ever lowered, and this was, therefore, a chance pick-up of seals. The *Viva*, in 1890, which took 370 seals in September; and the *Sea Lion*, in 1890, which took "about 300 seals in September."

The total number of seals taken by hunters who

testified on nearly 73,000 seals in September.

The United States Record of the termination of the sealing season was between

The Argonne witness State days in September made in the Bering Sea.

Captain of the 2nd of September last sealing

The statement remained in the record. The left the previous September before that

The statement were only which remained corrected

The testimony the termination does not interfere with the testimony

The statement voyages of the year 1890

Sea Lion Ocean Bering

testified on the witness stand at Victoria amounted to nearly 73,000. The total number taken in September was 730. The proportion taken in the month of September is as one to one hundred.

The United States contend that there is no fact in the Record so firmly established as the fact that the termination of profitable seal hunting in Bering Sea was between the 20th and 25th of August.

The Argument on behalf of Great Britain cites the witness Steele as saying that there are "some fine days in September, and that some fine catches are made in that month." Captain Steele was never in Bering Sea in September, according to his testimony. Brit. Arg., p. 67.

Captain Baker is cited as remaining in the sea until the 2nd of September. The record discloses that his last sealing day was August 27. R., 1078, line 40.

The statement is made that Captain Jacobsen remained in the sea in 1888 until the 7th of September. The testimony of Captain Jacobsen states he left the position in the sea where he was sealing, September 3, and does not state when he hunted last before that date. R., 727, line 29.

The statement made that in certain years there were only a limited number of boats (naming them) which remained in the sea without interference is corrected by the testimony here given.

The testimony cited in this Argument, establishing the termination of the hunting season in Bering Sea, does not relate to the voyages of vessels warned or interfered with by revenue cutters. Wherever the testimony disclosed that the voyage was interfered with in any manner no reference has been made to the testimony.

The statement made in the Argument, of the latest voyages ever made in Bering Sea and all made in the year 1890, corrected, would read: Brit. Arg., p. 69, line 17.

Sea Lion, 14 September; *Viva*, 12 September; *Ocean Belle*, 6 September; *Juanita*, 2 September;

W. P. Sayward, 28 August; *Penelope*, 26 August;
E. B. Marvin, 31 August.

The average of these dates is September 5.

Captain Alexander McLean is cited in the opposing Argument and the observation made that the answer stating that he "figured on getting back" about the last of August and the 10th of September, and the answer, which is not given in full in the British Argument, that he generally returned to San Francisco by the 11th of September, is inconsistent with his testimony "about the 20th of August I would consider the end of the season. I used to leave the sea then."

R., 462, line
65.

The Commissioner on the part of the United States asked, at the time this testimony was given, if there was any inconsistency, and called attention to the fact that the later time included the time required to make the return voyage.

In conclusion, every witness whose testimony is in the Record, when asked generally regarding the close of the sealing season in Bering Sea, fixed the termination of profitable hunting as between the 20th and 25th of August. There is no testimony in the Record given by a captain who was in the sea, and therefore based upon actual experience, extending the season into the month of September.

"METHOD

That po
Britain ent
Catch" pos
among th
employed
bilities.

pective p
and furthe
sarily app
from bec
demonstr
is so extr
that it can

In brie
catch of
took in
taken by
evidence,
how man
of her hu
seizure o
is being
when the

The sc
able hur
involved
the case
demonst
it is state
sea 24 d

EA.
August;
5.
opposing
e answer
at the last
e answer,
rgument,
o by the
estimony
r the end
"ed States
if there
n to the
quired to
ony is in
the close
termina-
20th and
e Record
therefore
e season

**"METHOD FOR COMPUTING THE ESTIMATED CATCH"
DISCUSSED.**

That portion of the Argument on behalf of Great Britain entitled "Method for Computing the Estimated Catch" possesses an originality which makes it unique among the formulæ which have previously been employed in dealing with the subject of probabilities. While the United States insist that "prospective profits" can not be allowed in any event, and furthermore that the contingencies which necessarily appertain to seal hunting preclude the results from becoming a legitimate field for mathematical demonstration, the method for computation proposed is so extraordinary, so unjust, and so unreasonable, that it can not be passed over without comment.

In brief, the scheme advocated is this: to take the catch of the schooner *Mary Ellen* in 1886, which took in that year the largest number of skins ever taken by any vessel in Bering Sea of which we have evidence, and calculate from the data of the voyage how many seals were secured on the average by one of her hunters during the period from the date of the seizure or warning of the vessel, for which the catch is being computed, to the 24th of August, the day when the *Mary Ellen* ceased hunting.

The scheme is complicated by a calculation of probable hunting days, which makes the method more involved without affecting the result; for example, in the case of the *Carolena*, given in the Argument to demonstrate the application of the system proposed, it is stated that 5 boats on the *Mary Ellen* were in the sea 24 days, which would equal 120 days for 1 boat;

that the "lowering days" were $68\frac{1}{2}$, and the catch 958; that the 4 canoes of the *Carolena* would have been in the sea 31 days, or 124 days for 1 canoe; the formula then adopted is this:

$$958 \times \frac{68.5 \times 124}{120} = \text{the probable catch of the } \textit{Carolena}.$$

It is apparent that $68\frac{1}{2}$, the number of hunting days, is superfluous, and can have no effect upon the result. This factor of "lowering days" appears to have been inserted in the problem for the purpose of making it seem more plausible, while in fact it only tends to complicate and mystify. Stripped of its superfluous factor, the formula proposed in the Argument is this: *The catch of the Mary Ellen, from the date of seizure (or warning) of the schooner ——— to August 24, divided by the number of boats on the Mary Ellen, times the number of days from the date of seizure (or warning) of the schooner ——— to August 24, and multiplied by the number of boats (or canoes) on the schooner ———, times the number of days from date of seizure (or warning) to the presumable close of the season, equals the probable catch of the schooner ———.*

The facts, which it is necessary to assume in order that this method of calculation may be applied, are so numerous, and at the same time so uncertain in themselves, that it is difficult to understand how such a mathematical scheme could have been suggested to the High Commission as a means of determining approximate certainty. That these assumptions are recognized in the Argument on behalf of Great Britain is shown in the illustration they give of the application of their formula. The Argument says:

Br. Arg., 82,
line 13.

If these four men [hunters on the *Carolena*] had been working in sealing waters during the whole of August, weather and other conditions being similar to that experienced by the *Mary Ellen*, the total would be, etc.

These assumptions as to the duration of the sealing voyage in Bering Sea, the universality of weather in

different p
ing vessels
selves pro
sufficient d
before the
at another
with in th
of the sea
in Bering
hunting,"

On revi
no attempt
Great Bri
the season
area in w
method p
the ramif
that there
found the
of Great
catch.

The fo
with at n

It is sho
equal num

An ex
what evi
numerou
rior for
ratio bet
of two w
this poin
tain Mel

The fo
testimon

Q. Wh
comparat

different parts of the waters frequented by the sealing vessels, and "other conditions" are all in themselves probabilities, and so problematic as to demand sufficient demonstration of their approximate certainty before they can be employed as a basis for arriving at another probability. They have been fully dealt with in this Argument under the titles of "Duration of the sealing season," "No defined sealing grounds in Bering Sea," and "Uncertain character of seal hunting," to which reference is here made.

On reviewing these assumptions, to establish which no attempt is made in the Argument on behalf of Great Britain, except in relation to the duration of the season, the abundance of seals, and the limited area in which they are found, yet without which the method proposed can not be applied, it is apparent the ramifications of these probabilities are so wide that there is not the slightest basis upon which to found the formula proposed in the Argument on behalf of Great Britain for a computation of an estimated catch.

The following statement appears in the Argument without marginal reference to the Record:

It is shown that boats took about one-third more than an equal number of canoes. Br. Arg., 79,
line 9.

An examination of the Record fails to disclose upon what evidence this statement is based. There are numerous witnesses who testify that a boat is superior for seal hunting to a canoe, but evidence of a ratio between them is altogether lacking, except that of two witnesses, who make definite statements upon this point, viz: Captain Alexander McLean and Captain McKiel. R., 324, line 9.
R., 327, line 65.
R., 402, line 31.
R., 729, line 13.

The former in his examination gave the following testimony:

Q. What in your judgment, from your experience, is the comparative value in sealing of canoes to boats? R., 424, line 9.

A. It will take more than two canoes to compete with a good white hunter.

Q. You mean with Indians in it?

A. Yes, sir; I have found them to be so, and have heard it from other vessels. Of course there are exceptions.

Q. Name the exceptions.

A. Some vessels with Indian hunters make very large catches.

Q. Is that because of the skill of those Indians?

A. Yes, sir.

Q. Those are exceptions, are they not?

A. They are.

The answer of Captain McKiel to a question relating to the proportionate hunting power of boats and canoes was as follows:

R., 329, line 45. Well, I can't say; but I think six good white hunters would be equal to ten canoes—the average canoes.

Q. You are now comparing white hunters with Indians in canoes?

A. Yes.

No witnesses were produced to contradict these statements.

Although there is no attempt to establish the assertion in the Argument on behalf of Great Britain, and no other reference is made to the subject, it is of the greatest importance in any attempt to reach a basis from which to calculate a "probable catch," for of all the vessels for which claims are made for such earnings before this High Commission, but four—the *Thornton* in 1886, and the *Triumph*, *Pathfinder* and *Ariel* in 1889—employed sealing boats with white hunters. In the case of the *Carolena* canoes were used, and although the Argument on behalf of Great Britain assumes that two white men in a canoe are equal to three in a boat, all the evidence which is worthy of consideration tends to disprove the assumption.

Returning to the formula proposed, let us apply it by substituting in place of the *Mary Ellen* the *Thornton*. The latter entered the sea on July 2, 1886; was

R., 265, line 8.

R., 265, line 39.

R., 327, line 65.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

R., 329, line 23.

seized Aug
three men

seizure w

As it m

of Great B

ton by the

expert as

finding sea

assumption

ment. Th

on the Th

was sealin

extension

the Argum

would be

a just co

the *Thorn*

of the *Mc*

were in A

prior to

four days

in July

advantag

Another

Commiss

a hunter

and for a

As a f

ward for

It is s

of the W

tion of

that the

purpose

method

regard t

Furth

Commis

seized August 1. She carried four hunting boats with ^{R., 932, line} three men in a boat, and her catch up to the time of ^{15.} seizure was 403.

As it must be assumed in the Argument on behalf of Great Britain in computing the catch of the *Thornton* by the proposed method, that her hunters were as expert as those of the *Mary Ellen*, and her fortune in finding seals equal to that of the latter vessel, the same assumption is adopted for the purposes of this Argument. The average catch per day for each hunter on the *Thornton* would be for the thirty days she was sealing, 3.36. Applying this average to the extension of the *Carolena's* voyage, as presumed by the Argument on behalf of Great Britain, her catch would be 417 seals. It may be argued that it is not a just comparison, from the fact that the hunting of the *Thornton* took place in July, while the operations of the *Mary Ellen*, on which the calculation is based, were in August. The *Mary Ellen* in thirty-four days prior to August 1 took 1,437 seals, while in twenty-four days in August she took 958, the daily average in July exceeding that for August. If there is any advantage, therefore, it is in favor of the *Carolena*.

Another fact, to which the attention of the High Commissioners is called, is that the daily average of a hunter on the *Mary Ellen* in July was 8.41 seals, and for a hunter on the *Thornton* was 3.36.

As a further test, let us substitute the *W. P. Sayward* for the *Mary Ellen*.

It is stated in the British Argument that the record of the *W. P. Sayward* is incomplete, but an examination of the testimony of Andrew Laing discloses that the data furnished by him is sufficient for the purpose of computing and estimating a catch by the method proposed, as we have shown that the data in regard to "lowering days" are superfluous.

Furthermore, there is no evidence before the High Commission showing that the *W. P. Sayward* was

Br. Arg., 79,
line 35. R.,
270.

interfered with during her cruise, and Laing, her mate, and a witness sworn on behalf of Great Britain, was not questioned on this point.

R., 1098, line 17. It should also be noted that the last "lowering" of the *W. P. Sayward* was the same day as that of the *Mary Ellen*. The former in the year 1886 carried eight canoes. Her catch for the first twenty-

R., 271, line 8. four days of August was 512. The average daily catch for one canoe during these twenty-four days was, therefore, 1.897. Assuming for the sake of argument, and for the purpose of comparing this basis with the one employed by Great Britain, that the *Carolena* would have sealed the entire month of August, we would have an average catch during that month for each canoe of 57.8; and the four canoes used by the *Carolena* would have taken 231 seals.

Again, let us take the *W. P. Sayward* in 1889 as a basis in place of the *Mary Ellen*. She entered the sea that year on July 7, and lowered last on August 18, a period of forty-three days' hunting. She carried 14 canoes, and made a catch of 1,812; the average per day for each canoe would be, therefore, 3.241. One canoe for thirty-one days, the time claimed as the intended voyage of the *Carolena*, would at this ratio have taken 100 seals, and an estimated catch for the *Carolena's* 4 canoes would therefore be 400.

R., 1725, line 8. Take the same vessel in 1890. She entered the Sea June 29, and lowered last, August 28, which would be sixty-one days of sealing, in which time she took in the neighborhood of 500 skins; each of her 8 canoes had, therefore, a daily average catch of 1.024 skins, and for the thirty-one days, assumed as the duration of the *Carolena's* voyage, the 4 canoes of the latter schooner would have taken 128 seals.

On the basis, therefore, of the *W. P. Sayward* for the three years 1886, 1889, and 1890, we have, by adopting the method proposed in the Argument on behalf of Great Britain, the following variations as

an estimate of August,

We may and the *Carolena* the purpose of a boat on the *Carolena* the 28th of 1,437 seals for each her sealing took in the day for each

Such examples computing of the data, hence proceeding are the assumption

When the United States to the Parliament estimated catch of a complete skins section. Why this Great Britain data for 1 this part of in the or the same used in the given in fictions made ants, it obtained order, the advanced

an estimated catch for the *Carolena* during the month of August, viz: 231, 400, and 128.

We may also compare the catches of the *Mary Ellen* and the *Carolena* during the month of July, 1886, for the purpose of reaching a ratio of the hunting power of a boat used on the *Mary Ellen* and a canoe used on the *Carolena*. The catch of the *Mary Ellen* from the 28th of June to the 31st of July, inclusive, was 1,437 seals, which would be a daily average of 8.41 seals for each hunter. The *Carolena*, assuming that her sealing practically began on the 1st day of July, took in thirty-one days 684 seals, or an average per day for each hunter of 5.51.

R., 376, line
67.

Such examples of the application of this method of computing catch might be multiplied to the full extent of the data relating to the 70 vessels given in the evidence produced before the Commission; but the foregoing are deemed sufficient to demonstrate how false the assumptions and how faulty the method proposed.

When these claims were originally presented to the United States in the case of Great Britain, submitted to the Paris Tribunal, the method of reaching an estimated catch for the claimants of 1886 was by means of a computation based upon the average number of skins secured by thirteen vessels sealing in that year. Why this method was abandoned on the part of Great Britain is apparent from an examination of the data for 1886, which is printed in a table attached to this part of the British Argument. The average reached in the original schedule of claims was substantially the same as the Bering Sea catch of the *Mary Ellen*, used in the present method; but from the testimony given in connection with Exhibit B of the declarations made by J. D. Warren, as agent for the claimants, it appears that the average in the table was R., 287. obtained from the catch for the entire season. In order, therefore, to maintain the average which was advanced in the original scheme of estimating the

probable number of seals which would have been taken by a schooner seized or warned, it was necessary for the claimants to adopt some other method than one based upon an average of the catches of the vessels, the data of which were given in evidence. No other plan than the one presented by the Argument on behalf of Great Britain could possibly give such large results or be more satisfactory to the claimants.

A careful examination of the items for "Estimated Balance of Catch," appearing in the schedule attached to the consideration of the separate claims in the British Argument, testing each by the formula suggested, fails to disclose how the numbers claimed were reached. For example, the claim for the *Anna Beck* is 3,000 skins, while calculated as proposed the "probable catch" would have been 4,082; the *Minnie's* claim is 3,500, according to the formula, 4,298; the *Triumph* (1889), 3,500 claimed, 5,852 computed; and the *Ariel*, 2,086 claimed, 3,436 calculated. In the majority of cases these skins claimed as "an estimated catch" are less than would have resulted from an application of the "*Mary Ellen* method," while in a few instances the claims exceed the calculated catch. The arbitrary change of the figures resulting from an application of the method of calculation proposed shows that it could not have been deemed satisfactory or equitable even when suggested.

Immediately preceding that portion of the Argument in which the mode of calculating "probable profits," based on the catch of the *Mary Ellen*, is explained and advocated, there appear five tables, giving what purports to be a summary of the evidence in regard to the vessels sealing in Bering Sea in the seasons from 1886 to 1890, inclusive.

In view of the method suggested in the opposing Argument, the object of this table is not apparent.

It certainly giving the base an anticipated that it is f another se had been o no opportu new bases

It is bel presented the most p and the o of mather

Attention Great Bri year 1890 of the Un at issue; a from the t testimony for the co evant, an missioner be recove

The po of testim the year Great Br as follow

The se There i mit that i in the min nation of I sion agen course, if would be take the question f

It certainly can not be presented for the purpose of giving the Commissioners other data upon which to base an estimate for "probable catch," nor is it anticipated that, having advocated a method and insisted that it is fair and just, Great Britain would suggest another scheme of computation after this argument had been delivered and when the United States had no opportunity to reply to such new proposition and new bases for the calculation of a "supposed catch."

It is believed by the United States that Great Britain presented to this High Commission what was deemed the most plausible method to be adopted on the facts, and the one which they considered to be most easy of mathematical demonstration.

Attention is called to the fact that at the time when Great Britain offered evidence as to the catch for the year 1890, it was strenuously objected to on the part of the United States as being remote to the questions at issue; and at the same time it should be noted that from the first the United States have insisted that all testimony offered for the purpose of founding a basis for the computation of a "probable catch" was irrelevant, and ought not to be entered upon by the Commissioners, on the ground that future profits could not be recovered by the claimants. Br. Arg., 81,
line 15.

The portion of the Record relating to the admission of testimony in regard to the Bering Sea catch for the year 1890, which was *originally* presented by Great Britain, and is now apparently abandoned, is as follows:

The senior Counsel on behalf of the United States: R., 722, line
32.

There is no probable catch claimed for 1890, and we submit that it is remote, and the same rule would cover as was in the minds of your honors when you excluded any examination of Mr. Alexander, the United States Fishery Commission agent, by us, as to the catches of 1894 and 1895. Of course, if there was a probable catch claimed for 1890 there would be no question about it under your honors' ruling to take the testimony as to probable catches, reserving the question for future argument. There is no question here as

to the cases of seizures in 1886, where they claimed the probable catch for 1887, or the seizures for 1887, where they claimed the probable catch for 1888.

The Commissioner on the part of Her Majesty:

I do not remember what was ruled before, but it seems to me that the catch for any reasonable year, especially after the time in respect to which the claim is made, would have a bearing, because presumably the seals are not appreciably greater. Therefore, at all events, within a limited number of years they may be considered to be about the same in number, and the catch in any year to be reasonably close—not getting too remote from the date in question—would seem to me to have a very obvious bearing upon the probable catch for the year in question. If we have ruled out evidence of this kind in 1894, the proper course would be to allow that evidence to be given, if it is considered that 1894 is not too remote.

The Commissioner on the part of the United States:

It was ruled out after very careful consideration.

The Commissioner on the part of Her Majesty:

The evidence might not be admissible in 1894, because at that time the mode of sealing was changed after the regulations came in force, and, of course, with a changed mode of sealing the circumstances would not be the same and the evidence would not be applicable; but it would be otherwise where the mode of fishing is the same.

It would seem from the fact that Great Britain having offered so much testimony in regard to 1890, and all the other years from 1886 up to that time, there was premeditated during the early sessions of the Commission at Victoria a plan to reach approximate certainty by means of applying the general average of a large amount of data in relation to catches of other vessels for those five years; but that, in examination of the testimony, it was found that in a large number of cases the evidence was incomplete, and in a still larger number was uncertain, through numerous contradictions in the testimony of different witnesses. This ground for the conclusion apparently reached by Great Britain is reasonable, and, as the

United Sta
tion of the
Probabi
as a branc
a future ev
question of
age, proba
confidently
will not a
excludes a
tainty. T
reached fr
that, even
States insi
employed
Commission
the rules

B S—

United States conceive, fully justified by an examination of the Record.

Probability, from the time that it has been treated as a branch of mathematics, has always, in deducing a *future event* from known *past events*, dealt with the question of general average. Without general average, probability is mere chance. It is, therefore, confidently believed that the High Commissioners will not adopt any method of computation which excludes an average resulting in approximate certainty. That a reliable general average can be reached from the evidence is denied, and it is asserted that, even if there were a legal basis, which the United States insist there is not, for the adoption of methods employed by mathematicians, there is before the High Commission no adequate data for the application of the rules which relate to the science of probabilities.

Encycl. Brit.,
Vol. XIX,
p. 768.

B S—17

THE VALUE OF SEAL SKINS.

R., 1881, line
64. Theodore Lubbe, a purchaser of seal skins in the city of Victoria since the year 1875, was the only competent and experienced witness called on behalf of either party to this controversy who gave general testimony of the value of seal skins in the market of Victoria in the years when the seizures by the United States were made.

Mr. Lubbe testified that the Alaska Commercial Company, of San Francisco, at that time lessees from the Government of the United States of the Pribilof Islands (R., 1883, line 23), Bessenger & Co. (R., 1890, line 65), The Hudson Bay Company (R., 1891, line 60), Liebes & Co., of San Francisco (R., 1931, line 23), I. & A. Boscowitz (R., 1932, line 21) and himself, representing Martin Bates, Jr., & Co., of New York, were purchasers of seal skins in the market of Victoria in the year 1886; that J. Uhlman & Co., of New York (R., 1883, line 29), Liebes & Co., of San Francisco (R., 1883, line 35), the Hudson Bay Company (R., 1883, line 36), J. Boscowitz (R., 1890, line 35), and himself, representing Martin Bates, Jr., & Co., were purchasers of seal skins in the market of Victoria in 1887; that Walter Borns, Joseph Uhlman, of New York, H. Liebes & Co., of San Francisco, himself, representing Martin Bates, Jr., & Co., The Hudson Bay Company, and I. & A. Boscowitz were purchasers in the market of Victoria in 1889.

R., 1884, line
36.

In the year 1886 *all* skins taken in Bering Sea and on the coast by seal hunters from the port of

Victoria w
Francisco.

any sales i

Theodor

16,797 sk

purchased

Alaska Co

of skins in

Lubbe, wa

skins in th

in her," an

Company'

skin.

In that

\$6.50 to \$

Q. Mr. I

catch here

A. Yes,

Q. Can y

A. The b

The m

Victoria i

as betwee

highest p

market pr

In the

by owner

in the ma

that yea

Morris M

market o

A total

chased in

Bay Com

The or

skins in

Theodor

Charles

Victoria were sold in the markets of Victoria or San Francisco. There is no evidence in the Record of any sales in that year elsewhere.

Theodore Lubbe purchased in that year at Victoria ^{R., 1882, line 50.} 16,797 skins. H. Liebes & Co., of San Francisco, purchased on the coast in 1886, 7,563 skins, and the Alaska Commercial Company bought a large quantity of skins in Victoria that year. The witness, Theodore Lubbe, was the agent for the sale of the *Mary Ellen's* skins in the year 1886; in fact, as he stated, "I owned ^{R., 1890, line 58.} in her," and sold the skins to the Alaska Commercial Company's representatives at Victoria for \$6.50 a skin.

In that year Bessinger & Co. were paying from \$6.50 to \$7 per skin. Lubbe testified:

^{R., 1893, line 16.}

Q. Mr. Lubbe, there were purchases of the Bering Sea catch here in Victoria in 1886?

A. Yes, sir.

Q. Can you tell me what they were sold for?

A. The highest I know was \$7 and the lowest \$6.50.

The market value of seal skins in the market of Victoria in the year 1886 is therefore definitely fixed as between \$6.50 and \$7. The claimants demand the highest price. They should be allowed the average market price.

In the year 1887 there were no skins sold directly by owners of sealing vessels in any other market than in the markets of Victoria and San Francisco. In that year Liebes & Co. purchased 17,956 skins. ^{R., 1900. R., 1932, line 23.} Morris Moss was buying for the Liebes firm in the market of San Francisco that year.

A total catch of 10,200 in *Bering Sea* was all purchased in Victoria by Uhlman, Liebes & Co., Hudson ^{R., 1883, line 27.} Bay Company, and Lubbe.

The only witness sworn as to the market value of skins in the city of Victoria in the year 1887 was Theodore Lubbe, who testified that he purchased from ^{R., 1882, line 17.} Charles Spring & Co., on the 10th day of October,

1887, 1,625 seal skins, at \$4.50 each, and the witness added:

R., 1882, line 33. For instance, in the Bering Sea the schooner *Kate* did not contain any gray pups to speak of; she may have contained a few, but in the others the pups are included.

Brit. Arg., 85, line 13. In the Argument on behalf of Great Britain, Charles Spring is cited as having sold his skins that year for \$7. If Charles Spring sold any skins that year at \$7, it was much earlier in the year than the cargo of skins from any of the vessels seized would have been landed in Victoria. The fact is, according to the books of Mr. Lubbe, that he received \$4.50 for each seal skin of the *Bering Sea* catch of his schooner *Kate* in that year.

R., 1883, line 30. Uhlman & Co., of New York, bought of Munsie the 2,377 seal skins taken by the *Pathfinder*, at \$6 per skin.

Brit. Arg., 85, line 2. The statement is made in the Argument on behalf of Great Britain that the skins sold by Munsie to Uhlman were less valuable because of the number of gray pups contained in the lot.

R., 1883, line 32. Lubbe testified:

Amongst these 2,377 there may have been 10 or 15 gray pups, which would change my figures slightly, but would not amount to anything.

R., 1883, line 34. Lubbe bought the *Penelope's* collection of 1,500 skins at \$5.50. This same year, 1887, Lubbe states

R., 1884, line 4. that skins were sold at the following prices in Victoria: Other skins from the *Pathfinder*, \$5.50; from the *Penelope* and *Theresa*, \$5.25.

I think they are subject to a very slight increase on account of a few gray pups. It would not amount to any more than 5 cents per skin.

R., 1884, line 13. Q. And all these skins were Bering Sea skins, or northern coast?

A. Yes, sir; Bering Sea skins.

Q. Could you give us the date of that last purchase?

A. October 11, 1887.

Mr. Lubbe's memorandum have enclosed bought a market price. Mr. Lubbe

Q. In 1887
A. I should say
Q. For skins
A. Yes, sir

This memorandum Captain Lubbe of skins is

Q. What was the price in the year 1887?
A. Well, I don't know what the market price was

This memorandum market price the fall of the money in the price of

Affidavit found in Arbitration

The affidavit in connection with the *Sagehen* skin seizure year 1887

The affidavit the *Admiral* cutter seized in Victoria

The affidavit directly

Mr. Lubbe testified that in 1887 he made this memorandum in his book: "Uhlman appeared to have enough. Davis (Uhlman's agent) could have bought a lot at \$5." Examined as to the average market price of skins in 1887 in the city of Victoria, Mr. Lubbe said:

Q. In 1887 would \$5.50 be a good fair average?

R., 1932, line 47.

A. I should think so; yes, sir.

Q. For all?

A. Yes, sir; for all.

This means Bering Sea skins.

Captain Warren, examined as to the market price of skins in the year 1887 at Victoria, said:

Q. What was the ruling market price of skins in Victoria in the year 1887 in the fall?

R., 1872, line 11.

A. Well, as near as I can remember, it was about \$5.50, what the buyers were paying here.

This testimony conclusively establishes that the market price of fur seal skins in the city of Victoria in the fall of 1887 was \$5.50. There is no other testimony in the Record bearing upon the average market price of seal skins at Victoria in that year.

Affidavits originally filed by the claimants and found in the British case presented to the Tribunal of Arbitration at Paris were read into the Record.

R., 1900.

The affidavit of Capt. James D. Warren, prepared in connection with the claims of the *Dolphin*, the *Grace*, the *Sagward*, and the *Anna Beck*, claimed for each seal skin seized \$5.50, the market value at Victoria in the year 1887.

R., 1901, line 51.

The affidavit filed in connection with the claim of the *Ada*, which was made on the 9th day of December, 1887, claimed for the seal skins seized by the cutter \$5.50 per skin, the market value of seal skins in Victoria in 1887.

R., 1901, line 43.

The value of seal skins in the year 1888 is not directly involved, and the testimony is not important.

The claim is made for \$11 for each skin seized in the year 1889.

Mr. Lubbe testified:

R., 1836, line
16.

Q. You have been asked to say whether a certain sum would be a fair average of the northwest coast catch as Lampson classified them in 1889, and you also say that that is not a fair way to get an average price for Bering Sea skins. Can you give us the average price for Bering Sea skins for the year 1889?

A. You mean a sum in London and here?

Q. Take it both ways, if you can, or if you can not, give us either one way or the other.

A. The price here was \$7.25 and \$7.60 in 1889. The price in London, I should think, would range between \$9.40 and \$9.50; the net results to shippers exporting skins would be between \$9.40 and \$9.50, the average results.

R., 1938, line
32.

Mr. Lubbe afterwards stated that he made a sale in London in 1889 at \$7.76 per skin. He again testified concerning the market price in Victoria in 1889:

R., 1938, line
44.

Q. Taking them as they ran?

A. You can not do that. If you take 75 per cent Bering Sea and 25 per cent coast catch, the average would be more than \$7.20.

Q. But as they ran in 1889, from your knowledge of the market, \$7.20 would be a fair average, would it?

A. Yes; I should think so.

Inasmuch as many skins seized from the schooners in 1889 were of the coast catch, this average price of \$7.20 per skin in Victoria would seem to be a fair value for the skins taken from the schooners. The highest market price of skins in Victoria in 1889 was between \$7.75 and \$7.60.

There is no testimony in the Record opposed to this, and in the Argument on behalf of Great Britain the price of skins is dismissed with one statement that Munsie says that he sold some in London for \$11.00.

Brit. Arg.,
85, line 45.

R., 1863, line
30.

Munsie testified as to sales made in London in the year 1889. He sold some at \$7.92. He sold other skins in 1889 at \$8.10. The date of that sale was October 30, 1889. He testified that he sold one lot for \$11.00.

R., 1864, line
20.

The cla
in the Br
read into t
Victoria.

(Charles
connection

The mark
about the t
that time,

Samuel
tion with
Novembe

The selli
arrival of
time sealin
season's ve

The aff
a referen

The cl
in the Ar
is no test
don in th
of any d
year 188

Warren
is that
great m
toria, ser
at the au

This
and the
show th
The onl
ment ev
stated th
but gav
Munsie.

The claimants, in the original affidavits contained ^{R., 1900; R., 1901.} in the British case filed at Paris, and which were read into the Record, all claimed the market value at Victoria.

Charles Spring, in his affidavit made in 1889, in ^{R., 1900, line 40.} connection with the claim of the *Kate*, said:

The market value of seal skins at Victoria aforesaid, at or about the time the *Kate* arrived from said voyage and since that time, was, and now is, \$8 per skin.

Samuel Bucknam, in the affidavit made in connection with the claim of the *Ariel* and sworn to in November, 1889, said:

The selling price of seal skins at said Victoria on the said ^{R., 1900, line 47.} arrival of the *Ariel* and on the 1st October, about which time sealing vessels usually arrive at Victoria from a fall season's voyage, was \$8 per skin.

The affidavits of all the other claimants contained a reference to the *market value at Victoria*.

The claim is made for the market price at London, in the Argument on behalf of Great Britain. There ^{Brit. Arg., page 84.} is no testimony of the *market* value of skins in London in the years 1886 or 1887. There is no evidence of any direct shipment by sealers to London in the year 1887. The statement is made that Captain Warren shipped skins to London in 1887. The fact is that J. Boscowitz, who was and had been for a great many years a purchaser of seal skins in Victoria, sent his skins to London, where they were sold at the auction sales for his account.

This shipment was not made by Captain Warren, ^{Exhibits, p. 394.} and the papers introduced in evidence on their face show the shipment was made by Joseph Boscowitz. The only other testimony in the Record of any shipment ever made to London was given by Hall, who stated that he made one shipment to London in 1888, but gave no account of the sale, and the testimony of Munsie.

Lubbe says the market price in London in 1889 was \$9.40 to \$9.50 net at Victoria.

The United States contend, as stated in another part of this Argument, that the price of the seal skins seized is fixed by the market price ruling in the city of Victoria at the time that the vessels would have delivered their skins there for sale. No rule of law is more firmly established than that which declares that in case of a loss of cargo before a voyage at sea is completed the value of the cargo is determined by the market value ruling at the port of departure.

Not only were no contracts put in evidence, but no evidence was offered that any of these claimants, with two exceptions, *even intended* to sell their skins on the London market. That there was a market at Victoria for the sale of skins is abundantly established, and that the claimants would have sold their skins in the port of Victoria is beyond question. In any event, had they testified that they intended to sell in London, the market value ruling in London could not control. That would be allowing damages based upon speculation, and no such rule of law has ever been established by any court.

The United States claim that the value to be awarded for seal skins seized in the various years is as follows: In 1886, between \$6.50 and \$7; 1887, \$5.50; 1889, \$7.20 to \$7.75.

EVIDENCE

The evidence
the purpose
seized by
losses to
heads:

First,
the seizure
Second
occupati
value of
vessels s

Third
to those,
the seizure

In di
valuation

I propose
that those
to show t

The
suggest
time we
the repl

I am
some res

Again

How
as what

In v
anticip

in 1889

another
seal skins
in the city
could have
le of law
declares
age at sea
nished by
ture.

ence, but
claimants,
their skins
market at
ly estab-
sold their
tion. In
ended to
London
damages
law has

to be
years is
7; 1887,

EVIDENCE RELATING TO VALUE OF VESSELS.

The evidence presented to the Commissioners for the purpose of establishing the value of the vessels seized by the United States, and which became total losses to their owners, may be divided into three heads:

First, actual sales which took place at the time of the seizures.

Second, the opinions of witnesses, competent from occupation and experience as experts upon the market value of vessels at that period, as to the value of the vessels seized.

Third, the cost of building vessels of a class similar to those, for which claims are presented, at the time of the seizures.

In discussing the method of reaching a proper valuation, counsel on behalf of Great Britain said:

I propose to show that there are ten or fifteen vessels, and that those vessels actually cost so much to build. I propose to show that by the very best evidence.

The commissioner on behalf of the United States suggested that actual sales of similar vessels at that time would give some idea of the market. To this the reply was made:

I am going to prove the actual sales and the actual cost of R., 120. some vessels.

Again he said:

How can I show better the value than by giving evidence R., 103. as what vessels were sold for at that time.

In view of these statements of counsel, we would anticipate that, under the first class of evidence sub-

mitted, Great Britain would have proved, or attempted to prove, a number of sales at the port of Victoria of vessels suitable for sealing during the period from 1885 to 1888, inclusive. But no witnesses were produced on behalf of the claimants in reference to such sales except in the case of the seized schooner *Carolina*, although the record discloses that at least ten vessels changed hands at Victoria during those years.

As these sales are deemed of chief importance in determining the prices ruling in the Victoria market at that time, it is proposed here to submit a summary of the evidence relating thereto, classified according to the years in which the transfers took place.

1885 OR 1886.

Alexander McLean, R., 412, line 19. The *Alfred Adams* (68.75 tons) was sold at Victoria to Gutman & Frank. But Frank, who was a witness on behalf of Great Britain before the Commissioners, was not questioned as to this sale.

Alexander McLean, R., 412, line 25. The *Black Diamond* (81.57 tons) was sold at Victoria about the same time, and was purchased by the same firm, but no questions were asked the witness Frank concerning this sale.

R., 1760, line 10. Henry Paxton, a witness for Great Britain, and part owner of the vessel, in 1886 stated *under cross-examination* that Gutman bought one-fifth of her in 1885 or 1886, and that witness did also, and that he (Paxton) paid \$500 for his one-fifth. In November, R., 1761, line 4. 1887, he sold his interest to Gutman for the same consideration.

1886.

Alexander McLean, R., 417, line 19. The *Active* (40 tons) was sold at Victoria for about \$3,800, to "Gutman & Co." (i. e., Gutman & Frank, as Gutman was subsequently lost upon this vessel). The witness Frank gives no testimony in regard to this sale.

The *Fa*
\$3,000, "j

An ende
to contrad
purpose T
relation to
nation dis
knowledge
which refe

The *Ka*
\$1,800.
mission an
his direct
cross-exam
McLean.

The *Mc*
at the rat
sale was
but no wi
establish

The *M*
about 188
H. Coope
states tha
is produc
the sale.

The *J*
1886. *M*
price the
on behali
of *McLe*
as to the

The *T*
evidence
concernin
The *V*
John Sa

The *Favourite* (79.54 tons) was transferred for \$3,000, "just as she came from sea."

Alexander
McLean,
R., 409, line
58.

An endeavor was made on the part of Great Britain to contradict this testimony of McLean, and for that purpose Theodore Lubbe was sworn as a witness in relation to the transfers of this vessel, but his examination disclosed that the sales, of which he had knowledge, occurred in 1883 and in 1884, and to which reference will be made hereafter.

The *Kate* (60 tons) was transferred at Victoria for \$1,800. Charles Spring, a claimant before the Commission and a party to the sale, was not questioned in his direct examination regarding the transfer, but on *cross-examination* he corroborated the statement of McLean.

Alexander
McLean,
R., 409, line
67.

The *Mary Ellen* (78-80 tons) was sold at Victoria at the rate of "something less than \$4,500." The sale was evidently a matter of common knowledge, but no witnesses were produced by Great Britain to establish the consideration which passed.

Walker, under *cross-examination*,
R.,
182, line 9

The *Mary Taylor* (50 tons) was sold at Victoria about 1886, and J. D. Warren, the agent of Thomas H. Cooper, the largest claimant, on *cross-examination* states that he purchased the vessel, but no evidence is produced by Great Britain as to the incidents of the sale.

Alexander
McLean,
R., 409, line
8.

Alexander
McLean,
R., 413, line
54.
R., 1156, line
63.

The *Juanita* (40 tons) was sold at Victoria about 1886. McLean stated that he did not know for what price the vessel was sold, but no witness was produced on behalf of Great Britain to disprove the statement of McLean that the vessel was sold or one to testify as to the consideration.

Alexander
McLean,
R., 412, line
29.

The *Theresa* (63 tons) was sold at Victoria, but no evidence was produced on the part of Great Britain concerning this sale.

Alexander
McLean,
R., 413, line
59.

The *Wanderer* (16 tons) was sold at Victoria by John Sabiston, one of the witnesses sworn on behalf

of Great Britain in regard to the value of vessels. The fact of this sale was elicited from him under *cross-examination*, but on his redirect examination the witness was not asked as to the consideration, but what it cost him to build the vessel.

R., 211, line
15.
R., 211, line
51.

Besides the sales which took place in 1885 and 1886, and which are of a special value in determining the market price of vessels at Victoria at the time of the seizures, the evidence discloses the following transfers, which, though in a measure remote, have a bearing upon the question under discussion:

1882.

R., 1100, line 39. The *W. P. Sayward* (59.79 tons) was one-half sold, about the time she was launched, by Andrew Laing to J. D. Warren. Neither of the parties to the sale, who were witnesses before the Commission, were questioned as to the incidents connected with it, and the only source of information as to the consideration which passed is Alexander McLean, who states that the one-half was transferred for \$3,000.

R., 460, line
56.

1883.

The Favourite (79.54 tons) was partly sold at Victoria to Alexander McLean. He purchased sixteen shares in the vessel for \$1,337.50 (that is, at the rate of \$5,350 for the vessel). The evidence concerning this sale was produced by Great Britain for the purpose of contradicting the testimony of McLean, to which reference has been made above. In regard to the consideration for the sixteen shares purchased, it must be borne in mind that this was "a master's interest," and therefore the purchase price was higher than the usual valuation of shares to ordinary purchasers. The entire vessel was again sold in December, 1884, to C. Spring & Co., for \$4,500.

R., 701, line
20.

R., 1724, line
27.

R., 701, line
29.

The *Ko*
purpose
brought
Spring, th
duced, sh
The *M*
for "som
failed to p
with the s
The *O*
for \$2,20
cross-exam

The *T*
vin and
Cox and
half of
on direc
Baker h
vessel w
everythi
Triumph
boats in
was \$75
hunters,
amounte
ing Sea
maining
munition
the sale.
In th
vessels
Victoria
on the
Atlantic

1884.

The *Kate* (60 tons) was one-third sold. For the purpose of explaining a valuation of the *Onward* brought out on the cross-examination of Charles Spring, the bill of sale to C. Spring & Co. was produced, showing that the consideration was \$2,800.

Alexander
McLean,
R., 460, line
60.

R., 890, line
34.

The *Mountain Chief* (20 tons) was sold at Victoria for "something less than \$500," but Great Britain failed to produce a witness to give the facts connected with the sale or to contradict the testimony of McLean.

Alexander
McLean,
R., 408, line
30.

The *Onward* (35 tons) was sold to C. Spring & Co. for \$2,200. This testimony was brought out on the cross-examination of Spring above referred to.

R., 879, line
62; 890, line
34.

1889.

The *Triumph* (97 tons) was sold at Victoria to Marvin and Cox by E. C. Baker for \$8,000 or \$9,000. Cox and Baker were both sworn as witnesses on behalf of the claimants, but neither was questioned on direct examination in regard to this sale. Mr. Baker however, on cross-examination, stated that the vessel was sold on October 11, 1889, for \$9,000, "for everything, as she was then lying in the harbor." The *Triumph* had 7 regular hunting boats and 2 other boats in her outfit. The cost of the 7 hunting boats was \$755. She carried at least 16 guns for white hunters, and her bills for firearms and ammunition amounted to \$776.70. She had returned from Ber-
ing Sea in July, and therefore presumably had remaining a considerable portion of her provisions, ammunition, and other supplies on board at the time of the sale.

Alexander
McLean,
R., 413, line
9.
R., 461, line
8.

R., 1431, line
60.

R., 1422, line
48.
R., 1426, line
19.

In the year 1886, there appear to have been 22 vessels actually engaged in sealing, from the port of Victoria. Of this number, 12 had their ports of origin on the Pacific Coast of the United States, 1 on the Atlantic Coast of the United States, 1 in Nova Scotia,

and 8 in British Columbia; of which latter number but 3 were built at Victoria, and these in the years 1881 and 1882. It is apparent that the chief source of supply for the Victoria sealing fleet in 1886 were the shipyards on the Pacific Coast of the United States, and it is a matter of common knowledge that San Francisco was the principal market for vessels on that coast. Under these circumstances the market value of sealing craft in 1886 and 1887 at the latter port, with the custom duties on, and cost of delivery at Victoria of vessels of that class, is material in determining the price obtaining at Victoria during the period when the seizures were made in Bering Sea.

The actual sales of schooners of light burthen at San Francisco during these years evidence the ruling market prices at that time. W. H. Thornley, a witness on behalf of the United States before the High Commission, who is the most experienced ship broker in San Francisco, and whose firm represents 90 per cent of the vessels registered at that port, and who has personally attended to 75 per cent of the transfers of sealing schooners there, testified to a large number of sales of vessels ranging in tonnage from fifty to a hundred and thirty, of which he had personal knowledge of the consideration. The following is a list of the vessels referred to, sold in 1886 and 1887, their tonnage, date of building, and the consideration which passed.

1886.

- R., 1722, line 43. *Addie C. Hazeltine* (129 tons); rebuilt 1885; one-half was sold at the rate of \$5,000.
- R., 1722, line 46. *Golden Gate* (93 tons); built in 1874; one-eighth was sold at the rate of \$5,000.
- R., 1722, line 50. *Irma* (92 tons); built in 1883; one-eighth was sold at the rate of \$6,400.
- R., 1722, line 52. *Ivanhoe* (114 tons); built in 1869; one-eighth was sold at the rate of \$4,000.

Page (1
one-fourth
San Jose
sold at the

Barbara
sold at the
City of
fourth was
Ivanhoe
were sold
Lillie I
was sold
Besides
to transfe
appeared
house, bu
considera
The list o

Bessie
was sold
Ino (95
the rate o
John N
was sold

Angel
\$1,000.
Alton
John I
was sold
The te
and com
ship-own
Francisco

Page (104 tons); built in Massachusetts in 1831; R., 1722, line 54.
one-fourth was sold in 1886 at the rate of \$4,000.

San Jose (52 tons); built in 1886; one-fourth was R., 1722, line 68.
sold at the rate of \$4,200.

1887.

Barbara (107 tons); built in 1877; one-eighth was R., 1723, line 4.
sold at the rate of \$5,216.

City of San Diego (46 tons); built in 1881; one- R., 1723, line 8,
fourth was sold at the rate of \$4,200.

Ivanhoe (114 tons); built in 1869; five-sixteenths R., 1723, line 13.
were sold at the rate of \$3,200.

Lillie L. (63 tons); built in 1887; one-thirteenth R., 1723, line 15.
was sold at the rate of \$5,200.

Besides the foregoing sales, Mr. Thornley testified to transfers of other vessels of the same class which appeared by the books of the San Francisco custom-house, but of which he had no knowledge as to the consideration other than that derived from the records. The list of these vessels is as follows:

1886.

Bessie Everding (70 tons); built in 1876; one-half R., 1796, line 32.
was sold at the rate of \$5,000.

Ino (93 tons); built in 1867; one-half was sold at R., 1797, line 27.
the rate of \$2,000.

John N. Ingalls (91 tons); built in 1875; one-eighth R., 1797, line 44.
was sold at the rate of \$4,000.

1887.

Angel Dolly (19 tons), built in 1860, was sold for R., 1796, line 16.
\$1,000.

Alton (84 tons), built in 1886, was sold for \$3,000. R., 1796, line 21.

John N. Ingalls (91 tons), built in 1875; one-sixth R., 1797, line 47.
was sold at the rate of \$4,200.

The testimony of Mr. Thornley was supplemented R., 1695, line 57.
and confirmed by Capt. Andrew Anderson, a large ship-owner and prominent shipping merchant of San Francisco, whose place of business had been for

twenty years a rendezvous of sealers and other seamen. That the supply of sealing vessels was sufficient to meet the demand is established by a list of over 40 vessels in the harbor of San Francisco, which could be utilized for seal hunting and which was given by Captain Anderson; and Walter Walker, a witness produced on behalf of Great Britain, stated that vessels could be bought cheaper in San Francisco than in Victoria, "because there was a large number of schooners there to choose from."

R., 180, line 51.

R., 180, line 62.

R., 406, line 58.

R., 1261, line 46.

R., 406, line 54.

The Canadian duty upon vessels of this class and the cost of bringing the same to Victoria from San Francisco is important in establishing at what cost these vessels could be supplied to the Victoria market. The duty upon such vessels was in those years 10 per cent, and the expense of bringing them from San Francisco was between \$235 and \$250.

From the lists of sales testified to as having taken place at Victoria, and from the lists given by Mr. Thornley, the following tables have been prepared which show the average price paid per ton for vessels actually sold at Victoria, and the average price per ton at Victoria for vessels built on the Pacific Coast and sold at San Francisco in 1886 and 1887:

Average price paid per ton for vessels sold at Victoria.

Year.	Vessels.	Tonnage.	Age at time of sale.	Cost per ton.
			<i>Years.</i>	
1885)	Alfred Adams.....	68.75	35	-----
or				
1886)	Black Diamond.....	81.57	(a)	\$80.56
	Favourite.....	79.54	18	38.97
	Kate.....	60	24	80.00
	Mary Ellen.....	78-80	23	b 56.25
	Mary Taylor.....	50	11	-----
	Juanita.....	40	11	-----
	Theresa.....	63	3	-----
	Wanderer.....	16	14	-----
1887	Black Diamond.....	81.57	(a)	30.56
1882	W. P. Sayward.....	59.79	0	100.00
1883	Favourite.....	79.54	15	c 67.28
1884	Favourite.....	79.54	16	56.57
	Kate.....	60	22	43.33
	Onward.....	35	13	62.85
1889	Mountain Chief.....	20	15	b 25.00

a Unknown.

b Less than.

c Master's interest.

Average price

Year.

1886 Addie C.
Golden G.
Irma....
Ivanhoe.
San Jose
Barbara.
City of St.
Ivanhoe.
Lily L....

1886 Bessie E.
Inc.....
John N.
1887 Angel D.
Alton....
Barbara
John N.

a "Cost per ton with the duty, 10 per cent, from San Francisco."
b Rebuilt.

In connection of the United States sealing vessels, it is seen at San Francisco in connection of Great Britain evidence transfers by Great Britain, little, if any value, be remote to

Mary Z
Victoria b

Vera (C
for \$7,44

B S

Average price per ton at Victoria for vessels built on the Pacific Coast and sold at San Francisco in 1886 and 1887.

Year.	Vessel.	Tonnage.	Age at time of sale.	Cost per ton delivered at Victoria a
<i>First Thornley list.</i>				
			<i>Years.</i>	
1886	Addie C. Hazeltine.....	120	6 2	\$44.58
	Golden Gate.....	93	12	61.82
	Ivanhoe.....	92	3	79.32
	San Jose.....	114	17	40.79
	San Jose.....	52	0	93.65
1887	Barbara.....	107	10	55.88
	City of San Diego.....	46	6	91.30
	Ivanhoe.....	114	18	33.07
	Lily L.....	63	0	94.76
<i>Second Thornley list.</i>				
1886	Bessie Everding.....	70	10	82.14
	Ino.....	93	19	26.34
	John N. Ingalls.....	91	11	51.09
1887	Angel Dolly.....	19	27	71.05
	Alton.....	84	1	42.26
	Barbara.....	107	10	53.73
	John N. Ingalls.....	91	12	53.51

a "Cost per ton delivered at Victoria" is based on the sale of the vessel at San Francisco with the duty, 10 per cent, added and \$250, the highest price fixed for bringing a vessel from San Francisco to Victoria.

b Rebuilt.

In contrast to this evidence produced on the part of the United States which established nine sales of sealing vessels at Victoria in 1886 and 1887, and sixteen at San Francisco in the same years, and taken in connection with the statement of counsel on behalf of Great Britain as to the value of "actual sales" as evidence of market value, is the following list of transfers at Victoria proved by witnesses produced by Great Britain, and which it is contended are of little, if any, assistance in determining the market value, being so few in number, and their dates so remote to the time when the seizures occurred.

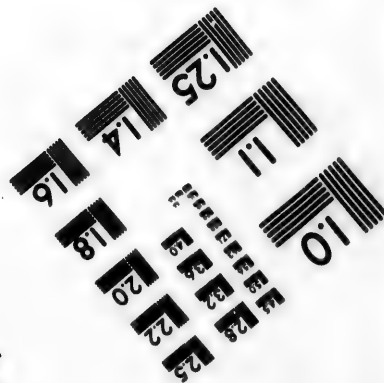
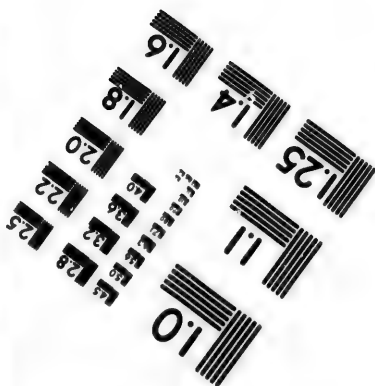
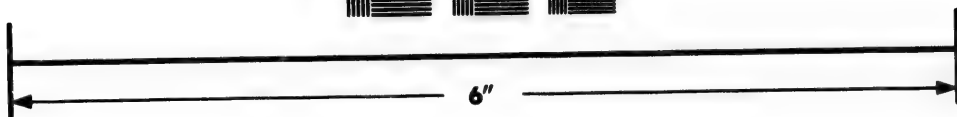
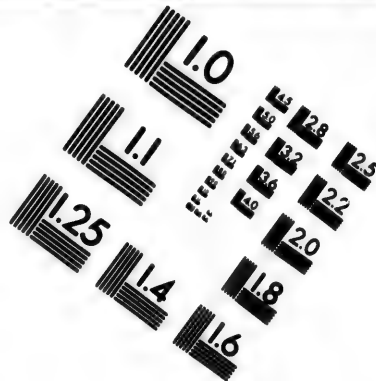
1890.

Mary Taylor (50 tons), built in 1875, was sold at R., 105. Victoria by Warren to Munsie for about \$4,000.

1893.

Vera (60 tons), built in 1888, was sold at Victoria R., 141. for \$7,442.

B S — 18



Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

128
132
125
122
120
9

11
10
01

R., 141.

Annie E. Paint (82 tons), built in 1885, was sold at Victoria about 1893 (?) for \$9,400.

1894.

R., 105.

Otto (86 tons); one-quarter interest was bought by Munsie at the rate of \$5,500.

Besides these sales at Victoria, Great Britain produced evidence to establish what was the cost of vessels, purchased in Nova Scotia, when delivered at Victoria. The schooners built in the east were of a superior class of material and workmanship to those produced in the shipyards of the Pacific Coast, and were with but one exception comparatively new vessels. It is therefore contended that the prices paid for such craft are no criterion of the market value of vessels constructed of Douglas fir by less experienced builders.

The list, classified by years, is as follows:

1886.

R., 104.

Pathfinder (66 tons), built in 1879, was purchased in Nova Scotia by Munsie. Her cost, delivered at Victoria, was \$6,500.

1887.

R., 158.

Aurora (about 70 tons), built in 1881, was purchased in Nova Scotia for \$6,600. She cost \$1,200 to bring her to Victoria, making a total of \$7,800. It appears, however, she had an accident in the Straits of Magellan, which undoubtedly added to her cost at Victoria, because of delay and repairs.

R., 104.

Viva (about 92 tons), built in 1885, was purchased in Nova Scotia and brought to Victoria by Munsie. Her cost, delivered at Victoria, was about \$9,000.

R., 754, line 47.

Sapphire (123 tons), built in 1884, was purchased in Nova Scotia and brought to Victoria, but the cost of the vessel was not given.

R., 1424, line 30.

Triumph (97 tons), built in 1887, was purchased in Nova Scotia by E. C. Baker and Daniel McLean for

\$5,000; and her owner

Ocean in Nova Scotia \$8,000.

Geneva Nova Scotia \$8,700.

Dora Her cost, From the claim from Nova Scotia tables have for such

Year.

1890 Mary
1893 Vera
1894 Annie
1894 Otto

Average

Year.

1886 Pathf
1887 Auror
Viva.
Sapph
Trium
1890 Ocean
Genev
1891 Dora

\$5,000; delivered at Victoria in April, 1888, she cost her owners \$8,250.

1890.

Ocean Belle (80 tons), built in 1884, was purchased in Nova Scotia. Her cost, delivered at Victoria, was \$8,000.

Geneva (90 tons), built in 1885, was purchased in Nova Scotia. Her cost, delivered at Victoria, was \$8,700.

1891.

Dora Sieward (93 tons), purchased in Nova Scotia. Her cost, delivered at Victoria, was \$9,039.20.

From the foregoing list of sales at Victoria, furnished by the evidence of witnesses sworn on behalf of the claimants, and of the list of schooners brought from Nova Scotia for sealing purposes, the following tables have been prepared, showing the price per ton for such vessels in the Victoria market:

Average price paid per ton for vessels sold at Victoria.

Year.	Vessels.	Tonnage.	Age at time of sale.	Cost per ton.
			Years.	
1890	Mary Taylor.....	50	15	a \$80.00
1893	Vera.....	60	5	124.03
	Annie E. Paint.....	82	8	114.63
1894	Otto.....	86		63.95

a About.

Average price per ton at Victoria for vessels purchased in Nova Scotia.

Year.	Vessels.	Tonnage.	Age at time of purchase.	Cost per ton delivered at Victoria.
			Years.	
1886	Pathfinder.....	66	7	\$98.49
1887	Aurora.....	70	5	a 111.57
	Viva.....	92	2	97.82
	Sapphire.....	123	3	
	Triumph.....	87		85.05
1890	Ocean Belle.....	80	6	100.00
	Geneva.....	90	5	96.67
1891	Dora Siewerd.....	93		97.19

a Accident.

From the foregoing summary of the evidence presented by both parties to this controversy, the following table is submitted as showing the average market price per ton for sealing vessels at Victoria in the years 1886 and 1887, as established by *actual sales*. The table contains three Nova Scotian vessels, which are included to avoid any charge of unfairness, although, as already stated, these schooners were far superior to those seized, both in material and construction.

Price per ton in 1886 and 1887 for vessels at Victoria, as shown by actual sales.

Year.	Vessels.	0 to 3 years old.	4 to 10 years old.	11 to 15 years old.	16 years and over.
1886	Black Diamond				\$30.56
	Favourite				38.97
	Kate				30.00
	Mary Ellen				58.25
1887	Black Diamond				30.56
1886	Addie C. Hazeltine	\$44.56			
	Golden Gate	70.32		\$61.82	
	Irma				40.79
	Ivanhoe	93.65			
1887	San Jose		\$55.88		
	Barbara		91.30		
	City of San Diego				33.07
	Ivanhoe	94.70			
1886	Lily L		82.14		28.34
	Bessie Everding			51.09	
	Ino				71.65
1887	John N. Ingalls				
	Angel Dolly	42.26			
	Alton		53.73		
	Barbara			53.61	
1886	John N. Ingalls				
1887	Pathfinder	97.82	98.40		
	Viva	85.05			
	Triumph				
	Average	78.20	76.30	55.47	39.73

NOTE.—The *Aurora* is omitted from this table, as it appears from the evidence that she met with an accident in the Straits of Magellan, which, as already stated, undoubtedly increased the expenses of bringing the vessel from Nova Scotia.

The second class of evidence, relating to the value of vessels, presented to the Commissioners, partakes of the character of expert testimony, and is substantially the only evidence relied upon in the Argument on behalf of Great Britain to establish the value of the seized vessels. The prominence given this class of evidence by Great Britain demands a detailed ex-

amination
bility of e
high cont

The w
first disc
in the Ar

Walter
wright a
the value

and Dolph
not appe
worked u

it appear
shipyard

prietor;
repairing
April, 18

port of V
on what
the years

value, as
nation :

Q. You
here in Vi
material,

they did g
A. Tha
Q. Who

were not
year, wer
A. No.

This v
and was
tion. W

repaired
\$7,000 c
register,
again tra

vidence pre-
the follow-
age market
oria in the
ctual sales.
sels, which
airness, al-
s were far
l and con-

shown by actual

1 to 15 years old.	16 years and over.
.....	\$30.56
.....	38.97
.....	30.69
.....	56.25
.....	30.56
\$61.82	
.....	40.79
.....	
.....	33.07
.....	26.34
51.00	71.65
.....	
53.51	
.....	
55.47	99.73

the evidence that
stated, undoubt-

o the value
s, partakes
is substan-
Argument
e value of
n this class
etailed ex-

amination of the qualifications, competency, and credi-
bility of each witness sworn on behalf of either of the
high contracting parties.

The witnesses produced by Great Britain will be
first discussed in the order of importance given them
in the Argument on behalf of the claimants.

Walter Walker, termed in the Argument "ship-
wright and proprietor of shipyard," and cited as to
the value of the *Carolena*, *Onward*, *Anna Beck*, *Grace*,
and *Dolphin*, was a journeyman ship carpenter. It does

not appear that he ever built a sealing schooner or
worked upon one in course of construction, nor does
it appear when he became interested in "Trahey's
shipyard," of which he claimed to have been the pro-
prietor; but in 1883 he was working as foreman in
repairing a Government steamer and left his trade in
April, 1884, to become measuring surveyor of the
port of Victoria. His estimates of value are based
on what it would cost to build vessels in Victoria in
the years 1886 and 1887, and do not refer to market
value, as is shown by the following from his exami-
nation:

Q. You can only tell what it would cost to build a schooner
here in Victoria where they did not have the ship chandlery
material, and where they would have to pay a high price if
they did get it; that is all you propose to tell?

A. That is all.

Q. When you testified as to the value of ships in 1886 you
were not very familiar with vessels that were sold in that
year, were you, or familiar with their prices?

A. No.

This witness had repaired the *Favourite* after 1882,
and was therefore familiar with her build and condi-
tion. When requested to place a value upon her
repaired, he gave as his opinion that she was worth
\$7,000 or \$8,000. The vessel, which was of 80 tons
register, was actually sold in 1884 for \$4,500, and
again transferred in 1886 "just as she came from sea"

Br. Arg., 97,
line 35.

R., 174, line
52.

R., 175, line
15.

R., 181, line
40.

R., 181, line
40.

R., 185, line
40.

R., 175, line
10; 183, line
6.

R., 184, line
28.

R., 701, line
29.

R., 409, line
85.

- for \$3,000. Questioned as to the schooner *Kate*, the witness said he knew her and showed intimate knowledge of her construction. When asked, "In 1886, when she was here, what was she worth?" he replied: "I should think she was worth about \$6,500." This latter vessel was of 60 tons register and was transferred in 1886 for \$1,800. The question was raised on his redirect examination whether he was well acquainted or not with these vessels; but it appears that he was *better* acquainted with them than with the *Thornton*, of which his valuation is relied upon in the Argument on behalf of Great Britain. He based his valuation of the *Grace*, *Dolphin*, and *W. P. S. Sayward* on what they *would cost to build*, and on the fact that they would not have depreciated in five or six years after being launched.
- R., 185, line 18. Q. Your estimate of A. Yes. Q. Entirely A. Entirely
- R., 409, line 67; 892, line 50. It is c can posse vessels s
- R., 836, line 53. George of Great Beck, Gr penter, w His expe timony :
- R., 980, line 35. Q. Did A. No. Q. Buy A. No. Q. Do A. No;

- Orlando Warner is cited in the Argument on behalf of Great Britain as to the value of six vessels, the *Carolena*, *Thornton*, *Onward*, *Anna Beck*, *Grace*, and *Dolphin*. He also was a *journeyman ship carpenter* and was for four years interested in a shipyard in Victoria; as he was so interested in 1891, he was but a *journeyman* in 1886 and 1887. His experience in building sealing vessels consisted in working as a journeyman on the *Dolphin* in 1881, and in 1890 and 1891 constructing under contract the hulls of two schooners. Between the years 1884 and 1888, inclusive, he built no vessels. He bases his valuation entirely on what it would *cost to build a vessel*. In regard to the value of the *Carolena* he testified:
- It is testimony in regard to the cost him

- R., 1015, line 18. Q. Do hull and A. Yes Q. An made rea A. Ye Q. An to rig he A. Ab Q. Th A. Ye Q. So worth \$
- R., 197, line 5. Q. Now, when you put her price at \$3,800 or \$4,000, are you thinking of what it would cost to build her?
- R., 199, line 17. A. That is my idea; yes, sir.
- Q. To build her new?
- A. Yes, sir.
- Q. And you base your estimate on that?
- A. Yes.

As a witness upon the question of the value of the

Grace, Dolphin, Anna Beck, and W. P. Sayward, he testified:

Q. Your estimate, of course, as usual, is based upon your estimate of cost? R., 1016, line 43.

A. Yes.

Q. Entirely?

A. Entirely.

It is contended that the testimony of this witness can possess no weight in determining the value of the vessels seized.

George W. Cavin, cited in the Argument on behalf of Great Britain as to the value of the *Thornton, Anna Beck, Grace, and Dolphin*, was a journeyman ship carpenter, who followed his trade about half the time. His experience in 1886 appears by the following testimony: R., 1028, line 16.

Q. Did you own any vessels in 1886? R., 1029, line 39.

A. No.

Q. Buy any part of one?

A. No.

Q. Do you know of any sales in those years?

A. No; I had nothing to do whatever with any sales.

It is needless to criticise the value of this witness's testimony, further than to quote his actual language in regard to the *Dolphin*, in connection with the evidence of J. D. Warren, the agent for the owner, that in 1881 the *Grace* (which was larger than the *Dolphin*) cost him to build, with engines complete, \$16,000: R., 1135, line 42.

Q. Do I understand that you put a value of \$14,000 on the hull and spars of the *Dolphin*? R., 1031, line 62.

A. Yes.

Q. And outside of that she would have to be rigged and made ready for sea?

A. Yes.

Q. And you think it would cost about one-third of \$14,000 to rig her to get ready for sea?

A. About that, I think.

Q. That would make about \$4,700 more?

A. Yes.

Q. So that the *Dolphin*, without her machinery, would be worth \$18,700?

A. Yes; she would run pretty well up to that, I think.

Q. And about how much would her engines and boilers be worth?

A. They would be worth \$3,000 or \$4,000.

Q. A large engine, like the *Dolphin's*, would be worth at least \$4,000 or \$5,000, would it not?

A. I don't know; that ain't a part of my business; I am not an engineer or machinist.

Q. But that would cost at least \$4,000 or \$5,000, you think?

A. It is pretty hard telling in Victoria about how much she would cost at that time.

Q. Give us your idea. You said \$3,000 or \$4,000?

A. They might have cost that and might have cost a great deal more.

Q. They would at least cost that?

A. Yes, they would at least cost that.

Q. So that would make the *Dolphin* worth about \$22,000 or \$23,000, with her machinery in?

A. Yes; I don't think she would cost much less than that at that time.

Br. Arg., 97,
line 35.

R., 166, line
46.

R., 836, line
8.

R., 853, line
3.

R., 835, line
67.

R., 831, line
64.

R., 1713, line
35.

Hubert J. Cook, cited in the Argument on behalf of the claimants as to the value of the *Thornton*, *Onward*, and *Anna Beck*, as "a shipwright and proprietor of shipyards for many years at Victoria" and "an experienced builder," was proprietor of a shipyard prior to 1883, in which year Turpel rented it, and who at the time of his examination was working as a journeyman. During the sixteen years he claims to have been engaged in building he never constructed any sealing schooners, but he calculates the value of a vessel in 1886 on the basis of what it would cost to build one at that time.

The capacity of the shipyard managed by Cook is shown by his statement, that in 1878 it took him eleven months to partially rebuild the *Thornton*, while Matthew Turner testified that in his yard at San Francisco a 100-ton vessel usually took sixty days to build "ready for sea," but could be completed at increased expense in thirty days. Cook was ques-

tioned as follows:

Q. How

A. Bec

Q. Ho

boats in

A. So

Q. But

at that t

A. Yes

and some

As ni

to befor

incomp

in his

worth

the repa

replied

She w

was whe

Q. W

of the s

A. It

He v

Q. M

Thornton

A. Y

It is

this wi

Rich

of Gre

Grace,

who s

vessels

Dolphin

them.

In t

in his

Q. D

A. N

tioned as to market value in 1886, and testified as follows:

Q. How do you know what it would cost in 1886?

R., 853, line 14.

A. Because I knew what the prices were.

Q. How do you know anything about the market value of boats in 1886?

A. So far as that goes there was no real market value.

Q. But boats were transferred from one person to another at that time?

A. Yes; we used to buy some vessels from San Francisco, and some came out from the East.

As nine sales in Victoria during 1886 were testified to before the High Commission, as already shown, the incompetency of this witness is apparent. He stated in his examination that the *Thornton* in 1877 was worth \$5,200. Being questioned as to the extent of the repairs he made upon the vessel in that year, he replied:

R., 830, line 26.

She was worth more when I was done with her than she was when she was built first.

R., 831, line 26.

Q. Well, then, your bill would represent the complete value of the ship?

A. It would at that time.

He was further asked:

Q. Mr. Cook, did you estimate the cost of repairing the *Thornton* in the year 1877 at \$3,500?

R., 935, line 9.

A. Yes, sir.

It is unnecessary to further review the evidence of this witness or to discuss his competency as an expert.

Richard Bennett, cited in the Argument on behalf of Great Britain as to the value of the *Anna Beck*, *Grace*, and *Dolphin*, was a journeyman ship carpenter, who stated that he did not know much about the vessels since 1883. His testimony in the case of the *Dolphin* and *Grace* is in relation to the cost of building them.

R., 1038, line 1.

R., 1037, line 30.

In the case of the *Anna Beck*, the following appears in his examination:

Q. Did you have anything to do with the sale of schooners?

R., 1038, line 17.

A. No.

Q. From actual sales, do you know anything about the value of the fleet of sealing schooners here?

A. I would have to take account of the vessels and look over them.

Q. Being a shipbuilder, do you, in estimating values, largely give your own idea of the cost of them?

A. I do.

Q. You are quite positive that the cost was cheaper in 1881 than in 1886?

A. I am.

Q. The cost of building was very high in 1886?

A. It was.

Q. And the value of the vessels correspondingly increased?

A. It did.

Q. Do you know anything about the difference in the values of vessels between 1881 and 1886?

A. No, I did not give it a thought.

The knowledge and experience of this witness are entirely insufficient to give his opinion as an expert the slightest value.

Alexander Watson, jr., cited in the Argument as to the value of the *Carolena* and *Onward*, was a journeyman ship carpenter, who built on contract the hull of one sealing vessel, the *Minnie*, in 1889. He stated that he knew of no sales of schooners in 1884, 1885, 1886, or 1887. His ignorance of values and his incompetency as an expert are shown by extracts from his examination:

R., 189, line 53. Q. How do you know what the *Carolena* would have sold for?

A. I do not know what she would have sold for.

Q. How do you know how much she was worth?

A. I gave my opinion of her value.

Q. How could you form an opinion of her value when you don't know what the market price was?

A. I could tell by what I heard of vessels; it was only hearsay, of course.

Q. You can state what she cost to build?

A. Yes.

Q. That is, your own opinion?

A. Yes.

Q. You do not know of a single sale of a vessel in these years?

A. No thing ab

He st
build th
what su
would l
not kno
Carolena

In hi
which l
harbor
tion wa
ton to l
this ba
\$5,000.

His t
rance c
S. M
Great I
was for
ing at
closed
that ca
the co
1891,

lena's
he imo
\$3,700
of the
for his
tion v
high a
ation
to bui

It i
qualif
1886
Joh

A. No; there might have been sale but I don't know anything about them.

He stated that he knew what it would have cost to build the *Carolena* in 1886, but upon being asked what such cost would have been, he replied that he would have to have the specifications, and that he did not know the length, breadth, and depth of hold of the *Carolena*. R., 190, line 11.

In his examination as to the value of the *Onward*, which he had never worked on, but had seen in the harbor of Victoria in 1885, he stated that his valuation was based on a calculation of \$125 per registered ton to build a new vessel of that class in 1886; and on this basis he valued the *Onward* at from \$4,325 to \$5,000. R., 858, line 50. R., 859, line 15. R., 858, line 68.

His testimony discloses the incompetency and ignorance of this witness.

S. McC. Smith, cited in the Argument on behalf of Great Britain as to the value of the *Grace* and *Dolphin*, was for a number of years a master shipwright, working at his trade in Victoria; and his examination disclosed three sealing vessels upon which he worked in that capacity; but his experience, in which he noted the cost of building, was confined to the years 1890, 1891, and 1892. When questioned as to the *Carolena's* value, he stated that he never had seen her, but he imagined that she would be worth about \$3,600 or \$3,700. He is not cited in the Argument in the case of the *Carolena*, presumably either out of deference for his method of valuation or because his imagination was not strong enough to bring his figures as high as the other witnesses sworn. He based his valuation of the *Grace* and *Dolphin* on what it would cost to build them in 1886. R., 191, line 50. R., 1013, line 48. R., 194, line 20. R., 1010, line 13.

It is contended that this witness has not been shown qualified to give testimony as an expert for the years 1886 and 1887.

John J. Robinson, cited in the Argument on behalf R., 155.

of Great Britain as to the value of the *Carolina*, was a journeyman ship carpenter, employed at the yard of Andrew Laing, one of the claimants before the Commission. The witness stated that he never built a sealing schooner, never bought one, and never sold one. Furthermore, the Record does not disclose that he ever worked upon any sealing vessel excepting the *Carolina* at the time when she was lengthened, in 1884. The value of the testimony given by this witness is best shown by extracts from his examination.

R., 156. Q. In the course of your business here have you acquired a knowledge of the value of vessels?

R., 153. A. No, I could not say that I have; I have general ideas all round.

R., 155. Q. Have you any opinion as to the value of the *Carolina* at that time?

A. I should think she was worth between \$4,000 and \$5,000.

Q. Have you any opinion as to the cost of building vessels per ton in Victoria at that time and prior to that time?

A. Oh, I suppose all the way from \$150 up, builder's measurement.

R., 156.

A. I have never built any schooners. That is my idea.

Q. After you had completed your work on the *Carolina*, at what did you value her per ton?

A. Oh, I suppose about \$165.

Q. She was worth then more than it would cost to build a new vessel?

A. You have got to take the vessel apart. You can not take her apart for nothing.

Q. Then that vessel that has been cut in two, and has been lengthened, is better than a new vessel?

A. No, sir; certainly not. It takes more labor to do it that way; she is worth more after you have finished. It takes more labor in proportion to do that work.

Q. Is she worth more than a new vessel of that length?

A. I don't say she would be worth more to her owner.

Q. Was she worth more on the market?

A. I understood she was worth about \$5,000.

The witness is, from his own evidence, clearly incompetent to give testimony as to the value of any sealing vessel.

Henry
on behalf
olena and
to do w
1887. I
is in con
in Nova
Victoria
appears

A. I at
Q. But
1887, sui
thereabo
ation?

A. I s
consideri
sels. I v
thirty ye

To w

Q. W

A. Fo

The

he mer
survey

His
in 1880

His
ignorant

1887, a
tion.

John

Great
Naime

had h
cost of

ion of
Carole

he is u
vessel

Henry F. Siewerd, cited in the British Argument ^{R., 157.} on behalf of Great Britain as to the value of the *Carolena* and *Ada*, was a sealing captain who had nothing to do with the sealing business prior to September, 1887. His only experience as to the value of vessels is in connection with the purchase of three schooners in Nova Scotia, the first one of which he brought to Victoria in 1888. The following from his testimony appears in the Argument on behalf of Great Britain: ^{Br. Arg., p. 90, line 38.}

A. I am not acquainted with the *Carolena*.

Q. But from your knowledge of vessels, take a vessel in 1887, suitable for sealing, and of the tonnage of 32 tons or thereabouts, would you consider \$4,000 a high or low valuation?

A. I should consider that a very reasonable valuation, considering the experience I had afterwards in buying vessels. I will say that in 1891 I paid \$3,200 for a vessel about thirty years old.

To which should be added:

Q. What tonnage was she?

R., 160.

A. Forty.

The *Carolena* was built the same year as the vessel ^{App. B, p. 29.} he mentions, and was 27.36 tons, according to the survey made of the vessel in 1884.

His ignorance of the *Carolena* and of market value in 1886 divests his opinion of the slightest weight.

His inexperience in purchasing vessels and his ignorance of the *Ada*, for which he made an offer in 1887, show that his valuation of her is mere speculation.

John Sabiston, cited in the Argument on behalf of ^{R., 208, line 54.} Great Britain as to the value of the *Carolena*, was a ^{R., 211, line 1.} Nanaimo pilot who never built a sealing vessel, but ^{R., 211, line 5.} had had "boats" built in 1872 and 1893. On the ^{R., 211, line 10.} cost of building in 1872 and 1893 he bases his opinion of what it would *cost to build* a vessel like the *Carolena* in 1884, and he fixes it at \$5,000. That he is utterly incompetent to place a value upon any vessel in the years when the seizures were made, or

at any time from 1880 to 1890, is evident from his testimony.

William Sleightholme, cited as to the value of the *Thornton*, was a *journeyman ship carpenter* who had been employed on the vessel in making the usual annual repairs. He had never been a contractor or master shipwright, and had never bought or sold a vessel. His knowledge of the cost of material for ship building was confined to the purchase of masts for one vessel. His valuation of the *Onward* was based upon what it would *cost to build* a vessel in the port of Victoria in 1886.

The evidence of such an inexperienced man, even so far as the cost of construction is concerned, can be of no value.

R., 166, line 40. William Turpel worked as a journeyman ship carpenter until 1883. In that year he rented ways and used them until 1885, building *two small tugboats* in that time. He then again became a journeyman, and remained so until 1887, when he bought the "Center Shipyard," and continued there until the present time, building in those ten years *two* sealing schooners and "quite a few tugs." In 1889-90 he built the schooner *Maybelle*, and in 1890-91 the *Sadie Turpel*. The witness, who is undoubtedly the most experienced shipwright sworn on behalf of Great Britain, was called in the cases of the *Carolena*, *Thornton*, *Dolphin*, *Grace*, *Anna Beck*, and *W. P. Sayward*. In regard to all of these, excepting the *Carolena*, he stated that he was not familiar enough with the vessels to fix a value upon them.

In the case of the *Carolena*, on direct examination, he gave his opinion that "if she was as good as they say she was," he should think she would have been worth about \$4,000. On cross-examination Turpel was asked: "*From your personal knowledge of the Carolena are you competent in your own mind to place a value upon her?*" to which he replied, "No."

The vessel in
On the s
Francisc
to deter
toria, we
examina
San Fra
disclose
in exces
latter p
sively v
Victoria
of build
for calc
owners
Rich
value
since 1
carpent
neyman
schoon
althoug
tion of
the fol

Q. D
was?
A. I
Q. A
rebuild
A. I
in Viet
Q. Y
A. I
Q. E
A. I
Q. I
1886?
A. I
Q. I
A. I

The witness also stated that the cost of building a vessel in 1886 and 1887 was from \$175 to \$200 a ton. On the same ratio the cost of building a vessel in San Francisco, deducting the duty and expense of delivery to determine the cost of such vessel delivered at Victoria, would have been from \$150 to \$175 per ton. An examination of the evidence of Matthew Turner, the San Francisco shipbuilder (which is later reviewed), discloses that such a figure would have been largely in excess of the actual cost in 1886 and 1887 at the latter port. This statement of Turpel shows conclusively why sealing schooners were not being built at Victoria in those years, and demonstrates that the cost of building at that port is not even remotely a basis for calculating what would have been the cost to the owners of replacing the seized vessels.

Richard Collister, cited in the Argument as to the value of the *Ada*, was inspector of hulls at Victoria since 1884, previous to which time he had been a ship carpenter. In 1883 the witness had worked as a journeyman on the *Dolphin*, and in 1887 had surveyed the schooner *Ada* for the underwriters at San Francisco, although his official duties were confined to the inspection of vessels using steam. In his cross-examination the following appears:

Q. Do you know anything about what the cost of the *Ada* was?

A. I have no idea.

Q. And in fixing the value, do you estimate the cost to rebuild her at Victoria?

A. I estimated her at what she would sell for at that time in Victoria.

Q. You are quite familiar with the sales of other vessels?

A. I knew vessels' value at the time.

Q. How did you learn that?

A. Because they were in great demand.

Q. Did you know of the buying or selling of any vessels in 1886?

A. I did not.

Q. 1887 or 1888?

A. I knew nothing about the sale of vessels.

It is clear from his evidence that his valuation was based entirely upon what it would *cost to build* a vessel in 1887, and as his experience in ship building, even as a journeyman, was previous to 1884, his testimony is valueless for the purpose for which it was produced.

R., 216, line
60.

John Clark was a *journeyman shipwright*, who came to Victoria about 1884, and who, since 1888, has been a contractor on his own account, during which time, in the winter of 1891-92, he built two sealing schooners of 69 tons each for \$8,750 and about \$9,000, respectively. His evidence is produced for the purpose of showing that the *cost of building vessels* had decreased at Victoria from 1886 to 1892. Although the cost of building at Victoria in 1886 has little bearing upon the question of market value, and the cost in 1892 is still more immaterial, the witness establishes his own incompetency by his testimony:

R., 217, line
24.

Q. Well, there was no building here in 1886 of sealing ships, was there?

A. No, sir.

Q. Nor in 1885?

A. No, sir.

Q. Nor in 1884?

A. I don't think so.

Q. Nor in 1887?

A. Not that I know of.

R., 217, line
56.

Q. You can not tell anything about the cost of a ship in 1884, 1885, 1886, and 1887?

A. Oh, I had nothing to do with them at that time.

Redirect examination:

Q. In the answer which you have given to the last question, have you in mind sealing vessels or vessels of all sorts?

A. I merely answered the question that I had nothing to do with sealing vessels at that time. I was repairing.

The only value of the testimony of this witness, is to show that a *journeyman shipwright* is incompetent to give expert testimony as to values, and that one engaged in repair work had little or no knowledge of the cost of building a vessel.

Samuel
Britain,
experien
ship carp
used for
a vessel
Britain
which h
The kno
of the q
by the f

Q. Hay
A. Yes
harbor.

Q. Hay
A. Yes
Q. Hay
A. I ca
Q. Ar
A. I th
Q. We
A. I c
Q. Ar
A. Ye

His i
Jame
and val
and an
sion.
stateme
in the h
as to h
No atte
the val
no kno
cruise
with se
of the
clearly

Samuel Sea, in the Argument on behalf of Great Britain, termed "a shipbuilder of large and long experience, and familiar with the *Onward*," was a *ship carpenter*, who built two schooners, "such as are used for sealing," in 1863 and 1868, and who last built a vessel in 1872. He was sworn on behalf of Great Britain as to the value of the *Onward* in 1886, on which he did some repair work in 1878 and 1880. The knowledge he possessed of the *Onward* outside of the question of his general experience is shown by the following testimony:

Q. Have you seen the *Onward* since you worked on her? Br. Arg., 105, line 5.

A. Yes, I have seen her when she used to come into harbor. R., 856, line 15.

Q. Have you been upon her? R., 856, line 68.

A. Yes.

Q. Have you seen her since 1886? R., 857, line 39.

A. I can not say I have seen her since 1886; I might.

Q. Are you positive you saw her between 1880 and 1886?

A. I think I have.

Q. Well, are you positive?

A. I can not exactly swear, but I am almost sure.

Q. Are you about as sure that you saw her since 1886?

A. Yes.

His incompetency is apparent.

James Gaudin, sworn in relation to the condition and value of the *Ada*, was the master of the vessel and an alleged personal claimant before the Commission. He is only cited in the Argument as to his statement that the *Ada* was the best sealing schooner in the harbor of Victoria in that year. His opinion as to her value does not appear to be relied upon. No attempt was made to qualify him as an expert on the value of vessels, and his evidence discloses he had no knowledge on which to base an opinion. As this cruise on the *Ada* was his first and only experience with sealing craft, his statement as to the superiority of the vessel possesses no weight as evidence. He is clearly incompetent to give any testimony as to value.

Br. Arg., p. 127, line 1
R., 1213, line 34.

John Irving, a witness, who had been engaged in buying and selling vessels at Victoria since 1874, was sworn in the case of the *Thornton*, but his opinion as to what it would *cost to build* such a vessel in 1886 is not referred to in the Argument on behalf of Great Britain. His ideas are so exaggerated, and his ignorance of the vessel so evident, that his opinion is of no value.

The four remaining witnesses upon the value of vessels, sworn on behalf of claimants, and cited in the Argument on behalf of Great Britain, are J. D. Warren, one of the personal claimants and the agent of Thomas H. Cooper, the largest claimant before this High Commission; William Munsie, Charles Spring, and J. J. Gray, three of the principal claimants (who for themselves or others represent claims, which, as submitted in the Argument, aggregate over \$500,000). The evidence of these witnesses, who possess a common interest in enhancing the value of sealing vessels at Victoria, and especially the schooners seized, must be received with the utmost caution. That all of them possess a certain amount of experience as to the value of vessels is unquestioned, but that they did, under the circumstances, and in view of the doubt^{ful} credibility of the three first mentioned (as disclosed by portions of their testimony), give a fair, unbiased opinion of the value of the vessels, as to which they were examined, is not probable.

In the report of the committee appointed by the board of trade, which was so relied upon by Great Britain in the Geneva Arbitration, the following observations appear, and are quoted in the counter case of Great Britain:

Geneva Arbitration, with the practice of the courts in maritime cases that it is counter case of Great Britain, p. 134. impossible to place much reliance on the opinion or evidence of shipowners or merchants as to the value of property, which they are seeking to recover. Shipowners are in the

habit of f
market p
the origi
amounts v
out any p
which has

These
opinions
the agen
the valu

It is
called as
but his
ward wa
W. Spr
and that
of the d
Co., for
former v
ever, hi
was wor
and tha
sels for
for sale
not brin
less tha
sels by

Havi
of the v
experts
by the
Alex
from b
coast, c
two ye
during
steame
and fis

habit of founding their estimate not on what would be the market price of the vessel at the time of her loss, but on the original cost price, and often take into account the amounts which they have expended at different times without any proper deduction for the wear and tear and damage which has been sustained.

These observations apply with equal force to the opinions and evidence of these three claimants and the agent, Warren, who are relied upon in estimating the value of the vessels seized.

It is also to be noted that William Munsie is not called as a witness on value in the case of any vessels but his own; that Charles Spring stated that the *Onward* was valued in the sale of the firm property of W. Spring & Co. at \$2,200 and the *Kate* at \$2,800; and that the latter vessel was sold in 1886, at the time of the dissolution of the partnership of C. Spring & Co., for \$1,800, while he claimed the value of the former was in the same year \$4,000, modifying, however, his valuation by saying, "considering that she was worth every bit of that to me at that special time;" and that James D. Warren testified that the five vessels for which his principal makes claim were offered for sale at public auction in the fall of 1885 and would not bring the face of the mortgages, which are much less than the amounts claimed as the value of the vessels by Warren, who had charge of the Cooper claims.

Having reviewed the qualifications and testimony of the witnesses sworn on behalf of the claimants, as experts, it is proposed to discuss those who were sworn by the United States.

Alexander McLean, a Nova Scotian by birth and from boyhood engaged in seafaring on the Atlantic coast, came to Victoria in the year 1880, and was for two years sailing from that port in different vessels, during which time he was mate of the Government steamer connected with the department of marine and fisheries. He began his experience in sealing in

R., 890, line 34.

R., 892, line 50.

R., 863, line 54.

R., 1087, line 63.

R., 429, line 12.

R., 400, line 30.

R., 400, line 58.

1882, as navigator of the schooner *San Diego*; since then he has been master of a sealing vessel, excepting in the year 1883, when he again sailed as navigator on the *San Diego*.

- R., 419, line 24. He became a member, in 1884, of the firm of C. Spring & Co., which was engaged in trading on the west coast of Vancouver Island, and which also owned several sealing vessels, retaining his connection with that firm until its dissolution in December, 1886. He testified that it had been a part of his business to keep posted as to the sales and transfers of sealing vessels on the Pacific Coast, and showed his familiarity with the market at Victoria by testifying as to the number of sales which occurred in 1886 to his personal knowledge, and which have already been reviewed.
- R., 404, 405, 406. His familiarity with the sealing vessels which were at the ports of Victoria and San Francisco in the years 1885, 1886, and 1887, is shown by an examination of his testimony, in which he gave the tonnage of the vessels and the years in which they were engaged in sealing.
- R., 459, line 62. Besides his experience in Victoria, Captain McLean was employed by prospective purchasers to inspect vessels which were offered for sale at San Francisco.
- R., 265, line 68. The witness Bragg stated that Capt. Alexander McLean and his brother were the two most experienced men in the sealing business at Victoria in 1886, and E. C. Baker, a claimant before the Commission, said that Daniel McLean "and Alexander McLean at that time (1889) and previously were considered the men best posted in that business." Every effort was made on the part of the claimants to shake
- R., 701, line 20; 701, line 29; 890, line 34; 752, line 15; 1305, line 54. Captain McLean's testimony by rigid cross-examination, and to destroy its effect by rebutting evidence, but in no single instance do we find, in an examination of the entire Record, that the attempts were successful; in fact, in many instances where witnesses were sworn for the purpose of contradicting him,

cross-examined, the testimony of Captain McLean before the United States evidence was sworn to possess an experience and 1887 the Commission. Charles in sailing who became of a sealing testimonies in Francisco market Francisco to the witness. the *Albatross* and supplied the *Admiral* the vessel Townsends the *San* was again taken value of peculiar their sales their case is based does not tled, a

cross-examination brought out a full corroboration of the testimony which he gave. It is to be noted that Captain McLean was part owner of the *Onward* and *Favorite*, two vessels for which claims are made before the High Commission. It is asserted by the United States that this witness is shown by his own evidence, and by the evidence of every witness who was sworn for the purpose of rebutting his testimony, to possess more experience and qualifications to be an expert as to the value of vessels at Victoria in 1886 and 1887 than any witness which appeared before the Commissioners.

Charles E. Raynor, who commenced his experience in sailing from Pacific ports in the year 1871, and who became master of a vessel in the year 1875 and of a sealing vessel in the year 1886, showed by his testimony familiarity with the sealing fleet at San Francisco and knowledge of the market price of vessels in that port. His entire experience as to the market for sealing craft is confined to the ports of San Francisco and Seattle, and his testimony in relation to the valuation of vessels is based upon that experience. In 1887 he had charge of the construction of the *Allie I. Alger* at Seattle, purchasing the material and superintending the work. In 1889 he inspected the *Ada* on behalf of James C. Nixon, who bought the vessel under his advice when she was sold at Port Townsend. In 1886 Captain Raynor was seized on the *San Diego* and taken to Unalaska and Sitka. He was again seized on the *Allie I. Alger* in 1887 and taken to the same ports. His testimony as to the value of the vessels seized in both these years is of peculiar importance in that he examined them after their seizure, and could testify particularly as to their condition. That his valuation of these vessels is based entirely on experience in American markets does not deprive it of the weight to which it is entitled, as it is merely a question of addition of the

custom duties and cost of delivery in order to reach a proper valuation in the port of Victoria.

- A. B. Alexander, who since 1888 had been employed by the United States Fish Commission on the Pacific Coast, and previous to which time had resided at Gloucester, Mass., since the year 1864, was sworn on behalf of the United States in relation to the value of the *Carolena*, which he had seen on the beach at Unalaska in the summer of 1888. Mr. Alexander during his residence at Gloucester had been engaged in the fisheries, in sailmaking, and in assisting his father, who was a shipbuilder of Gloucester. He testified that he knew of the cost of construction of vessels at that port, and on coming to the Pacific Coast in 1888 he examined the fishing vessels there employed (which are similar to those used in sealing), their rigging and construction, making notes at the time for general comparison with the vessels on the North Atlantic; that his investigations covered the age, general condition, rig, material, and cost of fishing and sealing craft, and that his reasons for such examination were his own interest in such matters and the fact that he might be called upon to give information upon this subject to the Fish Commission. He examined the vessel as to which he testified with care, and detailed her construction and condition at that time.
- From his experience, which was fully brought out in his cross-examination, it is plain that the witness was competent to give testimony as to the value of the *Carolena*.
- E. P. Miner was sworn as a witness on behalf of the United States as to the value of the *Carolena*. He had been engaged since 1875 upon fishing and hunting vessels, and had sailed from the ports of San Francisco, Yokohama, Victoria, and Seattle. In 1885 he became master of the British schooner *Penelope*, and since that time up to 1895 had been a master of

sealing v
that was
that two
Francise
San Fran
giving a
was gui
values at
building
mate kn
cost.

In gi
the mar
Miner is
dent fai
the clas
clearnes
based h
Carolena
of her in
material
she diff

It ap
nesses
the val
master
compar
ters.
values
vessels
ing wi
perien
an insp
agent
before
These
those
builde

sealing vessels. He stated that he knew every vessel that was engaged in sealing in 1886 and 1887, and that two-thirds of them were originally built in San Francisco. That he was familiar with the market at San Francisco is shown by his testimony, and that in giving an opinion as to the value of the *Carolena* he was guided chiefly by his knowledge of market values at that port. He testified also concerning the building of vessels in California, and showed an intimate knowledge of their construction, material, and cost.

R., 530, line 52.

R., 532, line 46.

R., 530, line 36.

R., 555, line 18.

R., 537, line 50.

R., 563, line 18.

R., 536, line 38.

In giving evidence as to the value of a vessel on the market in 1886 and 1887, the opinion of Captain Miner is of a special importance because of his evident familiarity and long experience with vessels of the class under consideration, and because of the clearness with which he showed upon what grounds he based his statements. His testimony in regard to the *Carolena* rested upon an examination which he made of her in 1889 at Unalaska. He described her model, material, and construction, and explained fully how she differed from marketable vessels in 1886.

R., 537, line 40.

R., 537, line 8.

It appears from the foregoing review that 21 witnesses were sworn on behalf of Great Britain as to the value of the vessels seized. One of these was a master shipwright, one the manager of a steamship company, one a pilot, and *ten journeymen ship carpenters*. These thirteen witnesses all testified as to values upon the basis of what it would *cost to build* vessels at Victoria in 1886 and 1887. The remaining witnesses are a sealing captain, who had no experience in the business prior to September, 1887; an inspector of hulls of steam vessels at Victoria, the agent of the largest claimant; three of the claimants before the Commission; and an alleged claimant. These seven testified as to the value of vessels in those years. The remaining witness is a ship-builder (William Turpel), and the most experienced

of the witnesses sworn on behalf of Great Britain, but he fails to place a value on any vessel from his own knowledge.

The witnesses sworn on behalf of the United States are four, three of them the most experienced sealing captains on the Pacific Coast, who from their comprehensive knowledge of the sealing business were fully competent to fix a value upon the schooners seized. The fourth witness was an employee of the United States Fish Commission, who had been familiar with the class of vessels used in sealing from boyhood, and with those on the Pacific for the past ten years. All of these witnesses give testimony as to the *market value* of the seized vessels.

The third class of evidence submitted to the Commissioners, but which can only be relied upon in case it is deemed a market price has not been proved, is the cost of constructing vessels of a similar class. It is apparent, from a review of the summarized evidence of witnesses sworn on behalf of the claimants as experts, that from the year 1883 to 1889, inclusive, there were no vessels built at Victoria.

The only evidence which was submitted under this head on the part of the claimants, excepting in the cases of seized vessels, related to the years 1890 and 1891, when it appears that increased facilities for the transportation of the necessary materials from the East had made it possible to build vessels at Victoria in competition with the large shipyards of San Francisco. The vessels built at Victoria in 1890 and 1891, of which evidence was given, were the following:

1890.

R., 167.

May Belle (57 tons) was built by William Turpel for \$6,500.

R., 168.

Sadie Turpel (56 tons) was built by the same man for \$10,500.

Diana
this year
or furnished
\$2,800.

Charles
this year
finishing
Warner
her cost

Victor
Siewer
Clark
before
stated
struction

Enterprise
of \$9,

Best
on behalf
building
"Cooper"

1882.
sioner
in the
that
have
nesses
United
the p
sealing
upon
years

As
evidence
upon
to fu

Diana (53 to 56 tons) was built and launched in R., 197, line 57. this year. Her hull, spars, etc., without rigging, sails, or furnishings, were supplied by Orlando Warner for \$2,800.

1891.

Charlotte Cox (83 tons) was built and launched in R., 196, line 52. this year. Her hull, spars, etc., without cabin furnishings, rigging, or sails, were supplied by Orlando Warner for \$5,600. He estimated the balance of R., 200, line 34. her cost at \$2,800.

Victoria (69 tons) was built, according to Captain R., 159. Siewerd, at a cost of over \$11,000. McDonald and Clark were the contractors. Clark, who was a witness R., 159. before the Commission on behalf of Great Britain, stated that the price which they received for the construction was \$8,750. R., 216, line 60.

Enterprise (69 tons) was built by Clark at a cost R., 216, line 68. of \$9,000.

Besides these vessels there is no testimony produced on behalf of Great Britain in relation to the cost of building vessels at Victoria, excepting the three "Cooper" vessels, which were launched in 1881 and 1882. There is some evidence before the Commissioners as to the cost per ton for building at Victoria in the years 1886 and 1887, but in view of the fact that no vessels were constructed this testimony must have been mere speculation on the part of the witnesses who gave it. It is contended on the part of the United States that there is no evidence presented on the part of Great Britain as to the construction of sealing vessels at Victoria which has the least bearing upon the market value of vessels at that port in the years 1886 and 1887.

As the cost of building vessels, in the absence of evidence establishing a market price, may be entered upon in determining value, it is considered advisable to fully discuss the evidence, although it is claimed by

the United States that a market price at Victoria has been shown. The principal witness and expert on the cost of building vessels on the Pacific Coast in 1886 and 1887 was Matthew Turner. He came to San Francisco in 1850, and, having purchased a schooner in 1853, commenced a coasting trade. Until 1871 he continued his occupation as a master of a vessel, owning at the same time two other vessels. In 1871 he established a shipyard at San Francisco, having learned the trade of shipbuilding at intervals between 1853 and 1871. From that time until the present (1897) he has constructed 188 vessels of from 20 to over 400 tons burden. His shipyard is the best known on the Pacific Coast, and excepting one at Port Blakeley, in the State of Washington, the largest. His knowledge and experience make him an expert of the highest class.

During the past fifteen or twenty years he has constructed numerous sealing schooners, and other craft, suitable for seal hunting. In 1885 he built six vessels of this class, and in 1886, five; all of these were built and furnished complete "ready for sea." Turner stated that in those years a vessel of 30 tons cost approximately \$115 a ton to build, and that a 70-ton vessel cost about \$90 a ton. In his cross-examination he was questioned as to vessels which he had constructed. His evidence can be summarized as follows:

- R., 1686, line 20. *Emma* (42 tons), built in 1885 for \$5,800.
 R., 1687. *San Jose* (R. 51 tons), built in 1886 for \$5,200.
 R., 1689, line 2. *Pearl* (83 tons), built the same year for \$9,500.
 R., 1718, line 37. *Moi Wahne* (83 tons), built at the same time at a cost of \$9,000.
 R., 1718, line 40. *Lavina* (68 tons), built in 1886 for \$7,232.
 R., 1719, line 42. The witness explained that in the case of the *Emma*
 R., 1719, line 62. she was finished as a yacht, with awning, etc., at an extra cost of \$1,000; and he also explained that the

Lavina
 cost bey
 should a
 McLean
 cussed,
 sealing
 Francis

In co
 vessels,
 in deter
 sider th
 vessels,
 the val
 their v
 cur am
 cent pe
 of depr

Capt
 been fu
 tion is
 ence of
 some c
 others
 that a
 conditi
 worth
 In the
 sworn
 appea

The

Q. V

A. T

The

Q. I

two y

A. I

year a

Th

Lucina had extra furnishings, which increased her cost beyond the usual price per ton for a vessel. It should also be noted in this connection that Captain R., 408, line 28. McLean, whose experience has already been discussed, fixed the average price per ton for a new sealing vessel, "ready for sea" in the port of San Francisco, at \$100.

In connection with the cost of building sealing R., 1690, line 63. vessels, and in order to make such evidence material in determining market value, it is necessary to consider the annual depreciation or "wear and tear" of vessels, which also becomes important in determining the value of vessels which had partially completed their voyages. Turner stated that, *with ordinary care and repairs*, a vessel depreciates about 10 per cent per annum. His reasoning upon this question R., 1691. of depreciation is extremely clear and full.

Captain Anderson, whose experience has already R., 1700, line 16. been fully discussed, stated that the annual depreciation is about 10 per cent, adding that there is a difference of opinion as to the first year after building; that some consider the wear and tear at 10 per cent, while others place it at but 5; and that he would consider R., 1700, line 51. that a vessel twenty years old, kept in a seaworthy condition by repairs or partial rebuilding, would be worth approximately 40 per cent of her original cost. In the examination of Captain Siewerd, a witness sworn on behalf of Great Britain, the following appears:

The Commissioner on the part of the United States: R., 1244, line 53.

Q. What would the ordinary wear and tear be?

A. The ordinary wear and tear would be 10 per cent.

The Commissioner on the part of Her Majesty:

Q. Do you deduct 10 per cent for wear and tear on a vessel R., 1244, line 61. two years old?

A. It is the custom to allow that on the average every year as we go along.

The following appears in the examination of J. D.

Warren, agent of the principal claimant before the High Commissioners:

By the Commissioner on the part of the United States:

R., 915, line 67. Q. What would it cost to refit this *Thornton*? I do not mean the outfit; but you say you thoroughly refit every autumn; how much did it cost each year to refit—take the *Thornton*, for instance?

A. Well, she would cost, oh, I should say——

Q. I am speaking simply of the vessel herself, to make good her wear and tear?

A. I think she would take fully \$1,000 a year, one year with another; one year she might not take so much and another a good deal more.

Q. Do you mean the wear and tear would be as much as that?

A. The running gear is a good deal, and the sail is a good deal, and then they have to be thoroughly overhauled and repaired, and if they require any caulking, to get it, and once in a few years have to put in new chaffing, and overhaul them.

Q. Do you mean a vessel of the size of the *Thornton* would take that?

A. I think she would take fully that.

Q. That would represent the wear and tear, would it?

A. Yes; I think she would take about that. The sealing business is a pretty hard business on these little vessels.

R., 1692, line 62. R., 1695, line 20. Matthew Turner, in further discussing the question of depreciation, stated that in his opinion a vessel which had been lengthened would decrease in value from 15 to 20 per cent per annum, and that a vessel whose hull had been injured by refitting for steam would depreciate more than the annual rate of 10 per cent.

R., 1692, line 25. R., 1693, line 4. His explanations as to how a vessel would be injured by lengthening, and how affected by putting in steam, are full and explicit. It is asserted by the United States that in any consideration of the cost of building vessels, which may be deemed necessary for the purpose of determining market value, the question of depreciation must also be taken into account, and that such vessels among those seized as had been

lengthened
light of

The
review
values
made,

First
a mark
and th
in that

Seco
at that
of sea
wright
for sea

This
marke
price
at San
transp

For
marke
and t
accor

Fif
and
no ac
sels
and
estab
could
year

Si
Victo
edge
San
perio

lengthened or fitted with steam must be valued in the light of Mr. Turner's testimony.

The United States claim that from the foregoing review of the evidence submitted in relation to the values of the vessels seized for which claims are made, the following facts have been established:

First. That in the years 1886 and 1887 there was a market at Victoria for vessels suitable for sealing, and therefore a market value for vessels of that class in that port.

Second. That there were no shipyards at Victoria at that time which were employed in the construction of sealing schooners, but to a certain extent the shipwrights there were engaged in repairing vessels used for sealing purposes.

Third. That the source of supply for the Victoria market in 1886 was San Francisco, and the market price at Victoria was governed by the prices ruling at San Francisco, with the customs duties and cost of transportation added.

Fourth. That the source of supply for the Victoria market in 1887 was San Francisco and Nova Scotia, and that the market price at Victoria was governed accordingly.

Fifth. That the cost of building vessels in 1886 and 1887 at Victoria must be conjectural, based on no actual experience, and excessive of the cost of vessels imported from San Francisco or Nova Scotia; and that such cost of building, even if it could be established, would form no basis upon which experts could calculate the market value of vessels in those years.

Sixth. That shipwrights engaged in their trade at Victoria in 1886 and 1887, who possessed no knowledge of sales of vessels at that port or at the port of San Francisco, and whose knowledge during this period of the cost of building does not come from

other experience than making repairs, are incompetent to give expert testimony as to the value of the sealing vessels in question.

Seventh. That witnesses who in 1886 and 1887 were familiar with the market of San Francisco and the ruling prices there, and witnesses who had knowledge of sales and transfers of sealing vessels at Victoria, are competent to give expert testimony as to the value of the vessels in question.

Eighth. That the sales of sealing schooners at the ports of Victoria and San Francisco during the years 1886 and 1887 are proper data for the computation of the market value of vessels in those years.

Ninth. That the remoteness of Nova Scotia, the superiority of the vessels there produced in material and construction to the schooners built on the Pacific Coast, and the small number procured from there in 1886 and 1887, make the prices paid for Nova Scotian vessels delivered at Victoria of but little value in establishing the market price of schooners at the latter port.

Tenth. That the sales of vessels at the port of San Francisco form a proper basis for the computation of the market value of sealing vessels at Victoria in the years 1886 and 1887; and in the absence of proof of an actual market value, the cost of building in the former port.

Eleventh. That the number of vessels, sales, and transfers at the port of San Francisco in 1886 and 1877 is evidence of the supply which existed for meeting the demands of the Victoria market.

It is proposed at this point in the Argument, and in connection with the preceding review of the evidence and witnesses produced by both high contracting parties, to briefly examine the claims made for vessels seized by the United States, and for the value of which it is asserted the United States have become liable. In all of the testimony as to value, it is claimed that

wear a
time o

The
built a
She w
was 5
hold,
She w
block
Oreg

Mr.
that s
ern l
type,
and t
over.

(Ca
old st
Ja
vesse
exam
Of
as to
upon
at th
they

Jo
W
A
about
beha
T
of t
\$3.2
O
\$3.8

wear and tear which the vessel had suffered at the time of seizure must be taken into consideration.

CAROLENA.

The *Carolena*, seized the 1st August, 1886, was App. B, 29. built at San Juan, United States, at a date uncertain. She was registered at Victoria in 1870. The vessel was 55.8 feet in length, 16.5 beam, and 5.5 depth of hold, with a gross and registered tonnage of 27.36. R., 470, line 35. She was constructed of soft wood, and fastened with block iron, not galvanized. The wood used was Oregon pine or Douglas fir. R., 178, line 8.

Mr. Alexander, who saw the *Carolena* in 1888, stated R., 470, line 50. that she had "primitive lines as compared with modern build," and that she was of an "old-fashioned type," "full bow," and "had but very little dead rise," and that "she had very full lines from bow to aft all over." R., 488, line 64.

Captain Miner also said of her that "she was a very old style—that is, in model." R., 537, line 11.

James D. Warren spoke of her as a "small-sized" vessel of sharp build, but added that he did not examine her after she was rebuilt. R., 229, line 18.

Of the witnesses sworn on behalf of Great Britain as to the value of the *Carolena*, six base their opinion upon what it would cost to build a vessel new in Victoria at that time. Their occupation and the valuations they give are as follows:

John Robinson, journeyman ship carpenter, \$5,000. R., 154.

Walter Walker, journeyman ship carpenter, \$4,000. R., 178, line 4.

Alexander Watson, journeyman ship carpenter, about \$4,000; and is so cited in the Argument on behalf of Great Britain. R., 188, line 15.

The last witness, on being corrected as to his idea of the size of the *Carolena*, changed his valuation to \$3,375. R., 190, line 50. R., 190, line 25.

Orlando Warner, journeyman ship carpenter, \$3,800 or \$4,000. R., 197, line 48.

- R., 194, line 20. John Sabiston, Nanaimo pilot, \$5,000. S. McC. Smith, master shipwright, who never saw the vessel, *imagined* she was worth about \$3,600 or \$3,700.
- R. 169. Besides the foregoing witnesses, William Turpel, proprietor of a shipyard at Victoria, placed a value of about \$4,000 upon the *Carolena*, "if she was as good as they say she was."
- R., 229, line 42. James D. Warren, agent of the principal claimant before the Commission, stated that he would consider the vessel worth \$4,000, although he did not examine her after she was lengthened.
- R., 241, line 7. Charles Spring, also a large claimant before the Commission, placed her value for *sealing purposes* to her owner in the neighborhood of \$3,800 or \$4,000.
- R., 87. William Munsie, the alleged owner of the vessel, stated that she was valued in 1885, when he became interested in her, at about \$3,800, but that he would "not be positive."
- R., 119. According to the considerations expressed in the various bills of sale to and mortgages from Munsie, the value of the *Carolena* at that time was \$2,000.
- R., 1024, line 10. Patrick Hickey, who was half owner of the vessel when she was sold in 1885, stated that he received \$1,000 as his share of the purchase price, and that Captain Urquhart, who made the sale, told him that he had sold the vessel for \$2,000.
- R., 209, line 38. As corroboration of the last valuation, it appears that the lengthening of the vessel renewed about two-thirds of her hull, and that such repairs cost \$900. At the same rate, although repair work was more expensive than the construction of a new vessel, the entire hull of the *Carolena* could have been replaced new for \$1,200.
- R., 200, line 34. Orlando Warner, who built the hull of the *Charlotte Cox*, estimated that the cost of the outfit would be one-third of the cost of the hull; and the same
- R., 1031, line 62.

ratio is
Dolphin

If co-
certainl

The v-
express
the pri-
markets

Alex-
the Vic-
saw her

A. B.
aminati-
at betw

Char-
value
market

Edw-
Unalas-
her and
would

Bein-
replied

In th-
unless t-
she cou

Agar

In th-
much, c-
There c

The
Dunge-
in 186-
ter, 51-
in dep

ratio is given by the witness Cavin in the case of the *Dolphin*.

If correct in their opinions, the *Carolena* was worth certainly not over \$1,600 or \$1,700 new.

The witnesses sworn on behalf of the United States expressed their valuation of the vessel entirely upon the prices ruling in the Victoria and San Francisco markets at that time.

Alexander McLean, who spoke from knowledge of the Victoria market, stated that the *Carolena* when he saw her in 1885 was probably worth \$1,700. R., 414, line 9.

A. B. Alexander, basing his opinion upon an examination of the vessel in 1888, placed the valuation at between \$1,800 and \$2,000, not exceeding \$2,000. R., 472, line 29.

Charles E. Raynor, whose experience as to the value of vessels is confined to the San Francisco market, placed her value there at \$1,000 to \$1,200. R., 503, line 3.

Edward P. Miner, who saw the *Carolena* in 1889 at Unalaska, stated that a difference in valuation between her and a new ship of modern construction and build would be fully 50 per cent. R., 537, line 45.

Being asked what she was worth in the market, he replied:

In the market I think she would be probably useless, unless there was some special business to put her into that she could accomplish. R., 538, line 5.

Again:

In the market generally a vessel that had been built up so much, of that age, would be, I think, comparatively useless. There could be no market value set on her.

THORNTON.

The *Thornton*, seized August 1, 1886, was built at Dungeness, in Washington Territory, United States, in 1861. She was, according to the transcript of register, 51.1 feet in length, 19.2 feet in beam, and 5.1 feet in depth of hold. Her registered tonnage was 22.30. App. B, pp. 101, 103.

- It is apparent from her dimensions and tonnage that the vessel was broad, flat-bottomed, and of an antiquated model, and this is confirmed by the fact that, prior to 1877, when she was changed from a sloop to a schooner, she had a centerboard.
- R., 859, line 58. Capt. Alexander McLean states that she was an old model.
- R., 1069, line 23. Captain Raynor, who saw her in Unalaska, where she was taken after seizure, states that "she was a very old-fashioned model—about the same model of vessels built about 1850 and 1855."
- R., 1056, line 68. It would appear from the evidence that the vessel was in a dilapidated condition at the time of her seizure, as her mainmast was broken off about 7 feet below the crossrees, and her fore rigging was carried away.
- R., 1056, line 63. That her condition in those years demanded extensive repairs every year on the part of her owners is apparent upon the statement of F. D. Warren, that the annual wear and tear upon the vessel would be fully \$1,000.
- R., 916, line 3. This may in a measure be accounted for by the fact that she was wrecked in the early summer of 1883 on the west coast of Vancouver Island, at a point where she was exposed for several weeks to the full sweep of the southwestern gales which prevail at that period of the year.
- R., 919, line 49. According to Warren, her engine was small, and it would appear from the evidence that it was of little value to the vessel as she was towed into Bering Sea through Unimak Pass by the *Dolphin*, although at the time she had all sails set and was *under full head of steam*.
- R., 937, line 10. Captain Warren stated that he purchased the vessel three years after she was built for \$1,800. He placed a value on her at the time of seizure of \$6,000.
- R., 844, line 41. In connection with this valuation of Captain Warren's, 1 interest 931. C cost of A. TH 932. C A. W the time a steam On m ored to guage possess The to Bos lic auc subje It a assign vessel mortg The given any v pleted In value more t The the va testin of a s were H. stated value W. worth
- R., 908, line 54. Exhibit, G. B., 47.

ren's, his testimony in *Warren v. Boscowitz* is of interest:

931. Q. I want you to state as nearly as you can what the cost of these vessels was. R., 944, line 24.

A. The cost of running them?

932. Q. No; the vessels.

A. Well, I put the *Thornton*, I think, at \$4,000—that is, the time she had her machinery put into her and was made a steamer of.

On redirect examination, Captain Warren endeavored to explain away these statements, but the language is too plain to deprive it of the weight it possesses.

The *Thornton* was mortgaged in 1885 by Warren to Boscowitz for the sum of \$4,000, and sold at public auction, after being regularly advertised, for \$1,000, subject to this mortgage. R., 1086, line 68.

It appears also by the charter party from Warren's assignee to Boscowitz, dated February, 1886, that the vessel could not be sold for the amount due on the mortgage. R., 1087, line 20.

The annual wear and tear on the *Thornton*, as given by Captain Warren, must be deducted from any valuation made of the vessel, as she had completed over three-fourths of her voyage.

In the Argument on behalf of Great Britain the value claimed for the *Thornton* is \$7,000, or \$1,000 more than is claimed by her alleged owner. Br., Arg., 99, line 9.

The evidence relied upon in the Argument as to the valuation of the vessel is entirely based upon testimony of what it would cost to build a new vessel of a similar type. Four journeymen ship carpenters were produced to establish such a valuation.

H. J. Cook gave her value in 1881 at \$5,500, but stated that he was "not talking about the market value." R., 835, line 50.

Walter Walker said that he "considered she was worth, machinery and all, about \$6,000 in 1886." R., 837, line 25.

R., 965, line 3. William Sliegtholm valued her, before her machinery was put in, at about \$5,000, and in 1886, machinery and all, at "perhaps something over \$7,000."

R., 1028, line 44. G. W. Cavin, who was employed to float the vessel when she was grounded in 1883, stated that he supposed "she was worth probably \$5,000 or \$6,000, exclusive of her machinery."

Besides the ship carpenters above referred to, a report of Assistant Treasury Agent Lavender is relied upon in the Argument as to the valuation of the vessel.

R., 966, line 19. Mr. Lavender saw her in 1890 on the beach at Unalaska, and he states: "I should think, *when new*, that \$7,000 would be a fair price for her, including her engines and all other accouterments, ready for sea."

It is evident that this statement may be placed in the same category as the testimony of the ship carpenters referred to, who base their valuation upon the cost of building new vessels in 1886.

On the question of market value but one witness appears by the Record to have given evidence—Capt. Alexander McLean—and he testified as follows:

R., 1069, line 46. I think from her age and appearance at that time, and from the other vessels that were changing hands here, I think she would be worth about \$1,800, outside of the machinery.

ONWARD.

App. B, p. 104. The *Onward*, seized 2d August, 1886, was built in California, United States, in the year 1871. According to the transcript of register, her length was 56.5 feet, beam 20 feet, and depth of hold 4.5 feet. She had a registered tonnage of 35.20. She was constructed of the usual material used upon the Pacific Coast, termed indiscriminately Oregon pine and Douglass fir.

As to the value of this vessel, five ship carpenters

were sworn
estimated
ing vessel

Huber
estimate
swered,
something

Orlan
the age
estimate
\$5,000

Samu
of her k
Alexa
ing seen
she was

Walt
value to

Besid
Charles
claiman
sworn o
vessel.

he repl
that she
time."

On c
intend
in 1886
what sh
having

The
market
and C
on bo
after t
market

were sworn by Great Britain, all of whom based their estimates upon the cost at Victoria in 1886 of building vessels similar to the *Onward*.

Hubert J. Cook, on being asked, "What is your estimate of the cost of the *Onward* in 1886?" answered, "I considered between \$4,000 and \$5,000, or something like that." R., 853, line 28.

Orlando Warner, who stated that he did not know the age of the vessel and never worked upon her, estimated her value in the neighborhood of \$4,000 to \$5,000 "ready for an ordinary trip." R., 855, line 40.

Samuel Sea stated that he should think a vessel of her kind, as she was then, would be worth \$4,500. R., 856, line 48.

Alexander Watson, jr., gave his opinion, from having seen her in the harbor on several occasions, that she was worth from \$4,325 to \$5,000. R., 858, line 68.

Walter Walker stated that he should judge her value to be about \$4,000. R., 860, line 1.

Besides these five witnesses sworn as experts, Charles Spring, half owner of the vessel and the claimant in this case before the Commission, was also sworn on behalf of Great Britain as to the value of the vessel. Being asked for his opinion as to her value, he replied: "I put her down at \$4,000, *considering that she was worth every bit of that to me at that special time.*" R., 863, line 51.

On cross-examination he was asked: "Did you intend to testify to the market value of the *Onward* in 1886?" To which he answered: "No, no; *just what she was worth to myself engaged in that business, having nothing to bear on the market whatever.*" R., 879, line 1.

The only two witnesses who testified as to the market value of the *Onward* were Captain Raynor and Capt. Alexander McLean. The former was on board of the vessel at Unalaska immediately after the seizure and stated that he considered the market value of the *Onward* in 1886 to be \$2,000. R., 900, line 49.
R., 900, line 32.

- R., 1070, line 14. Capt. Alexander McLean, who was half owner of the vessel, stated that he would consider the *Onward* to be worth in the port of Victoria in the year 1886 from \$2,200 to \$2,300.
- R., 1070, line 8.
- R., 879, line 61. In corroboration of this testimony of Captain McLean's it appears that the *Onward* was transferred in June, 1884, to Charles Spring & Co. for \$2,200.

ANNA BECK.

- App., B, p. 112. The *Anna Beck* was built at San Francisco in 1865. Her length was 63.7 feet, beam, 22.6 feet, depth of hold, 5 feet. She had a registered tonnage of 36.35.
- R., 1133, line 67. She was purchased by J. D. Warren in 1872 for \$4,000, and in 1880 she was fitted for steam. Only Oregon pine was used in her construction.
- R., 975, line 35.
- R., 974, line 59. In 1883 she was burned to the water's edge, and was rebuilt at Victoria.
- R., 1134, line 15.
- R., 1134, line 50. Captain Warren testified that the cost of rebuilding was about \$5,000, "*everything complete*." The machinery which had been in the vessel when she was burned demanded considerable repairs, and the \$5,000, it would appear from the evidence covered whatever work was done in making the engine of use.
- R., 978, line 35. Five witnesses were sworn on behalf of Great Britain as experts upon the value of the vessel. All of them were journeymen ship carpenters.
- R., 978, line 50. Walter Walker considered her worth \$8,000 or \$9,000 when she first came out in 1883, after the repairs, and estimated her depreciation in four years to have been between \$500 and \$1,000. He stated also that his value was based "on the day's work and material, whether costly or not."
- R., 981, line 69.
- R., 1016, line 25. Orlando Warner, who worked part of the time on the *Anna Beck* while she was undergoing repairs in 1883, valued her without her machinery at from \$5,000 to \$6,000.

Geor
sent at
sive of
that sh
exclusi

Riel
much
at abo
All
their v
at Vie

It r
repair
Victor
could
work
but at
who v
Victor
direct

The
by on
this m
auctio
for a

In
chart
Rustl
Bosed
chart

And
upon
sum f
* * *

Be
vesse
appr
\$2,6

George W. Cavin said that the vessel would represent at that time between \$6,000 and \$7,000, exclusive of machinery. On cross-examination he stated that she was probably worth \$7,000 or \$8,000, exclusive of machinery. R., 1031, line 40.

Richard Bennett, who stated that he had not seen much of the *Anna Beck* since 1883, fixed her value at about \$6,500. R., 1038, line 1.
R., 1038, line 10.

All of these witnesses, as heretofore shown, base their valuation upon the cost of building a new vessel at Victoria in the years 1883 or 1886.

It must be also borne in mind that the cost of repair work was more expensive than new work in Victoria, and that a vessel similar to the *Anna Beck* could have probably been built in 1883 by the day's work for a sum less than the cost of her rebuilding, but at the time when the accident occurred Warren, who was then her registered owner, was absent from Victoria, and the repairing was done under the direction of an agent or attorney. R., 1031, line 12.

The *Anna Beck* was mortgaged for \$4,000 in 1884, by one Hartnell, to Joseph Boscowitz. Subject to this mortgage the vessel was sold in 1885, at public auction, for \$1. In the fall of 1886 she was again sold for a nominal price, subject to the same mortgage. R., 1086, line 65.
R., 1087, line 15.
R., 1088, lines 10, 53.

In February, 1886, the assignee of J. D. Warren, chartered the *Grace*, *Dolphin*, *Anna Beck*, *Thornton*, *Rustler*, and one-half of the *W. P. Sayward* to Joseph Boscowitz, the mortgagee. In the preamble of the charter the following appears:

And whereas the amount due to the said Joseph Boscowitz upon the said mortgages or bills of sale, is greater than the sum for which the said schooners and interest can be sold R., 1087, line 12.

Bearing also upon the question of the value of this vessel is the fact that after her seizure she was appraised at Sitka, with her outfit and furnishing, at \$2,600. R., 1166, line 53.

In a letter from the United States marshal to the Acting Attorney-General of the United States, dated August 23, 1888, the following appears:

R., 1276, line
53.

The owners of the schooners *Anna Beck*, *Grace*, and *Dolphin* claim that the appraisement made at Sitka one year ago was *at the time excessive*, and that their value on account of the inclement weather of Alaska has in the meantime constantly been depreciated, and therefore declined to bond them at such appraisement, which if not granted they desire the sale to proceed.

The owner says, however, that he will furnish satisfactory bonds for the schooner *Anna Beck*, at her present appraised value, if it can be effected subject to a final settlement of the matter and without expense of an appeal to the Supreme Court.

R., 1278, line
14.

A similar statement appears in a letter from the Secretary of State to the British minister at Washington, dated September 27, 1888.

On the 4th of June, 1889, a committee of the honorable the Privy Council, approved by His Excellency the Governor-General, in council, referring to a former report adopted in December, 1887, in relation to the seizure of the *W. P. Sayward*, *Grace*, *Anna Beck*, *Dolphin*, and *Ada*, reported that—

R., 1270, line
20.

One vessel was released on the 15th May, 1888, under bonds, viz, the schooner *W. P. Sayward*. The owners of the other vessels (except the *Ada*, for which no owner could be found) considered that the appraisement was largely in excess of the value of the vessels.

To meet the obvious conclusions to be drawn from the statements appearing in these letters and report, a telegram was offered in evidence on behalf of Great Britain, addressed to the Hon. C. H. Tupper, from Lieutenant-Governor Nelson, dated at Victoria, July 20, 1888. The following is an extract from the telegram:

R., 1282, line
29.

The district court of Alaska has refused bonding to the owners, giving as reason application too late. Under present circumstances owners willing and anxious to bond vessels for appraised values—*Anna Beck*, \$2,600; *Dolphin*, \$7,750;

Grace, \$10,404; *Ada*, \$2,900. Pending settlement of question have sale postponed.

The date of this telegram is *two months prior* to the letter of the United States marshal and *three months prior* to the letter of the Secretary of State, while the report of the committee of the privy council, already referred to, was approved over ten months *after* this telegram to the minister of marine and fisheries of Canada.

It is claimed, therefore, that it does not in any way affect the weight of the evidence produced as to the excessiveness of the appraisal, and it would appear that if the owners in July were willing to bond the vessels at the appraised value, they reconsidered the matter before the date of the letter of the United States marshal.

The principal witness produced on the part of Great Britain as to the value of the engines and boilers of this vessel and of the others registered in the name of T. H. Cooper was F. A. Thomson, the official inspector of hulls at the port of Victoria. His testimony is based upon surveys, not made by the witness, appearing in the records of his office for the year 1885. He stated that the engine of the *Anna Beck* was substantially a duplicate of the *Thornton's*, which has already been discussed.

His values are evidently uncertain, as at one place in the Record he values the machinery of the *Grace* in 1885 at \$3,500 and again at \$3,200, but does not state whether that valuation is for 1885 or 1886. If the latter valuation is for 1885, it is clearly contradictory of his former statement, while if it is a valuation for 1886 the depreciation of the engine and boilers would be approximately 8½ per cent. Yet he stated that the *Thornton's* machinery could be sold *after five years' using* at but 7½ per cent off its original value. These statements of Thomson are much

at variance with those of Andrew Gray, inspector of boilers in 1882. The latter witness stated that machinery kept in good running order would depreciate 5 per cent a year, and that he had sometimes seen second-hand machinery go at one-fourth of its cost. He added, "It is hard to place a value on second-hand machinery." All the other witnesses, excepting Gray, who are produced as experts on the machinery base their opinions on the descriptions given by Mr. Thomson, which were shown to be incomplete.

GRACE AND DOLPHIN.

App. B, p. 114. The *Grace* and *Dolphin* were built at Victoria; the former in 1881 and the latter in 1882. According to the transcript of register, the *Dolphin's* length was 77 feet, beam, 22.7 feet, depth of hold, 7.5 feet, and registered tonnage, 60.10. The length of the *Grace*, according to her register, was 76.5 feet, beam, 23.4 feet, depth of hold, 8 feet, and registered tonnage, 76.87.

R., 1030, line 13. The *Dolphin* appears by the testimony to have been built of better material than the *Grace*; the latter being constructed chiefly of Douglas fir, while the former had yellow cedar and oak as part of her material.

R., 951, line 1. J. D. Warren, who had the vessels built, testified that the *Grace* cost "about \$16,000," while the *Dolphin* cost "something over \$16,000." In giving these amounts he included the engines complete. All the evidence submitted on behalf of Great Britain as to the value of these vessels is based upon what it would cost to build them. S. McC. Smith estimated that the *Dolphin* would cost \$9,700 when launched, and the *Grace* \$10,000.

R., 1010, line 35. Walter Walker, who also based his valuation upon the cost of construction, stated the *Grace* was worth "in the neighborhood of \$12,000," and that in 1887 she was worth about \$13,000 or \$14,000.

Richa
ter, sta
between
Dolphin
more."
mission
of the
(Geor
Dolphin
chinery
\$20,00
Orla
as abo
valuati
Whi
uncert
owner,
amount
sels w
places
witness
ation
two v
stores.

The
origin
the fir
plank
regist
feet d
C.
fore
spars
outfit
Fr

inspector of
ted that ma-
d depreciate
ometimes seen
of its cost.
on second-
es, excepting
e machinery
iven by Mr.
nplete.

Richard Bennett, another journeyman ship carpenter, stated that the *Grace*, he "should think, cost between \$12,000 and \$13,000" complete, and that the *Dolphin* he "should suppose would be worth \$2,000 more." In answer to a question by one of the Commissioners, he stated that his valuation meant the cost of the vessel.

George W. Cavin reached a valuation upon the *Dolphin* of "about \$22,000 or \$23,000 with her machinery in," and upon the *Grace* of "about \$18,000 or \$20,000."

Orlando Warner gave his valuation of the *Dolphin* as about \$9,000, exclusive of machinery, basing his valuation, as usual, upon the cost of construction.

Victoria; the
2. Accord-
phin's length
old, 7.5 feet.
gth of the
feet, beam,
stered ton-

Which of the two vessels was the more valuable is uncertain. We have James D. Warren, agent of the owner, giving the cost of each at about the same amount, and Orlando Warner stating that the vessels were of about equal value, while S. McC. Smith places a higher valuation upon the *Grace*, and the witnesses Cavin and Bennett place a higher valuation upon the *Dolphin*. The appraisement of these two vessels at Sitka, with their furniture, outfit, and stores, was, the *Dolphin*, \$7,750; the *Grace*, \$10,404.

ny to have
ce; the lat-
as fir, while
part of her

ADA.

ilt, testified
ile the *Dol-*
iving these
e. All the
Britain as
on what it
estimated
launched,

The *Ada*, seized August 25, 1887, had her port of origin at Yokohama, Japan. She was built in 1882, the frame being constructed of kieki wood, while her planking was of Oregon pine. According to her register she was 75 feet long, 21 feet beam, and 8 feet depth of hold, with a registered tonnage of 65.23.

ation upon
was worth
at in 1887

C. A. Lundberg, one of the personal claimants before the Commissioners, stated that her hull and spars actually cost \$5,500, while the balance of the outfitting of the vessel was \$2,000.

From further examination of the Record this state-

- ment of the mate of the *Ada* must be accepted with caution, as it appears that in April, 1886, when the vessel was four years old, twenty-one shares of the schooner, and one-third of the interest in her boats, guns, ammunition, and small arms were transferred by White, then the sole owner, to Gray, for \$1,333.33. The following year the vessel was brought to Victoria.
- App. B. p. 183. J. J. Gray, on the 30th of March, 1887, purchased twenty-two more shares of the *Ada*, the consideration in the bill of sale being stated as \$2,368.40.
- App. B. p. 184. The testimony of Gray discloses that the actual price he paid for the third he last purchased was \$1,333.33, besides which, and included in the consideration mentioned in the bill of sale, was the cost of repairing and preparing the *Ada* for her trans-Pacific voyage to Victoria. It would appear from this that one-third of the vessel was sold in the spring of 1887 at the rate of \$4,000 (Mexican), at Shanghai; and Gray further testified that it cost to bring the vessel across the Pacific "about \$200 or \$250, may be, running expenses and wages of the vessel. Soon after she arrived, which was in the early part of April, Captain Siewerd, whose qualifications for placing a value upon vessels have already been discussed in this Argument, made Gray an offer of \$8,000 or \$9,000 for the *Ada*. The offer included her sealing outfit, excepting some provisions.
- R., 1239, line 58. Captain Siewerd stated that in the autumn the *Ada* would, including depreciation, have been worth to him \$1,800 less than he offered in the spring. As her voyage had been completed before she was boarded by the officers of the United States, even accepting this offer of Captain Siewerd's as evidence of her value, she would have been worth in the neighborhood of \$6,800.
- R., 1237, line 14. J. D. Warren, who acted on behalf of the owners of the *Ada*, made a declaration at Ottawa for the
- R., 1226, line 25.
- R., 1242, line 15.
- R., 1244, line 54.

purpose of presenting the claim of the vessel to the United States, in which is the following statement:

The value placed on the *Ada* by her said owner at the time R., 1263, line of the seizure, viz., \$7,000, is a fair and reasonable value for 43. the *Ada* when seized.

In his cross-examination in regard to this valuation, Gray's testimony is as follows:

Q. The question is, Mr. Gray, was your estimate of the R., 1238, line *Ada* \$7,000? 37.

A. That I could hardly tell.

Q. What is your best judgment about it; was that your estimate of the value of the *Ada* presented against the Government?

A. About \$7,000; \$7,000 or \$8,000; something of that sort.

The claim is made in the Argument on behalf of Br. Arg., 128, Great Britain, that the value of the *Ada* was \$9,000, line 34. or fully \$1,000 more than the owner claimed in 1887.

The only witnesses produced on behalf of the claimant in support of this claim are James Gaudin, master of schooner, who stated she was the best sealing vessel in Victoria, and R. Collister, who said that she was "worth fully \$9,000," basing his opinion R., 1313, line 7. upon the knowledge which he possessed of the value of ships and the cost of shipbuilding in the port of Victoria in 1887. The competency of these witnesses to give an opinion as to the *Ada's* valuation or superiority has been heretofore discussed.

Two witnesses are produced on behalf of the United States as to the value of the *Ada*. Captain Raynor, who, as captain of the *Allie I. Alger*, was seized on the same day as the vessel in question, accompanied her to Unalaska, and was present at her trial in Sitka, stated that the *Ada* was worth on the market at Victoria in the fall of the year 1887 about \$6,000, R., 1252, line 10. reaching this valuation upon his knowledge of the United States markets, with 10 per cent added for the Canadian customs duties.

R., 1264, line
40.

Capt. Alexander McLean gave his opinion that the market value of the *Ada* in Victoria in 1887 was about \$6,500, from which must be deducted the wear and tear for a full season, having been seized August 25.

The United States claim that, for the vessels seized and condemned, owned by persons in whose behalf Great Britain is entitled to claim compensation from the United States, they are liable to pay the market value of such vessels at the port of Victoria at the time of their seizure.

PER

The
of Feb
the cla
at Pari
of Gre
The

David Mo
Margotiel
Hans Gut
Harry No
James Og
James Bl

Tot

Warren.

John Rei
George P
A. B. Lati
Louis Ol
Michael J
W. Petit
C. A. Lu

Tot

To

No
mitte
and r
claim
above

ion that the
7 was about
he wear and
August 25.
essels seized
hose behalf
nsation from
the market
a at the time

PERSONAL CLAIMS OF CAPTAINS AND MATES.

The personal claims submitted by the Convention of February 8, 1896, to this High Commission are the claims submitted to the Tribunal of Arbitration at Paris, between pages 1 to 60, inclusive, of the case of Great Britain as filed before that Tribunal:

These claims are:

Personal claims.

Claimed by—	For—	Amount claimed.
1886.		
David Monroe, master of Onward.....	Illegal arrest and imprisonment	\$4,000
Margotich, mate of Onward.....	do	2,500
Hans Guttormsen, master of Thornton.....	do	4,000
Harry Norman, mate of Thornton.....	do	2,500
James Ogilvie, master of Carolina.....	do	2,500
James Black, mate of Carolina.....	do	2,500
Total for 1886.....		18,000
1887.		
Warren, master of Dolphin.....	Sufferings and losses: Navigating four vessels from Unalakaska to Sitka.	2,635
John Reilly, mate of Dolphin.....	Sufferings and losses.....	1,000
George P. Ferey, master of W. P. Sayward.....	do	2,000
A. B. Laing, mate of W. P. Sayward.....	do	1,000
Louis Olsen, master of Anna Beck.....	do	2,000
Michael Keefe, mate of Anna Beck.....	do	1,000
W. Petit, master of Grace.....	do	2,000
C. A. Lundberg, mate of Ada.....	do	2,000
Total for 1887.....		13,635
Total for 1886 and 1887.....		49,635

No other claims for personal damages were submitted to this High Commission by the Convention, and no sum can be awarded to any claimant whose claim is not set out and included in the schedule above given.

The United States took this position early in these proceedings, and moved the High Commission to dismiss from consideration the personal claim of James Gaudin, for the reason that it was not embraced in the schedule of the British case, between pages 1 to 60, as presented to the Tribunal of Arbitration at Paris; was not referred to in article 9 of the award of that tribunal; was not embraced in the Convention between the United States and Great Britain, of February, 1896; that it did not arise by virtue of the treaty of 1892, or of the award and findings of the Tribunal of Arbitration at Paris; and is not an additional claim specified in the fifth paragraph of the preamble to the Convention of 1896.

All personal claims other than those named in the above schedule must be dismissed from the consideration of the High Commissioners, and no damages can be awarded the claimants.

The schedule discloses that no claim was made before the Tribunal of Arbitration at Paris for damages arising from the illegal arrest and imprisonment of the mate of the *Grace*.

A claim is made for damages suffered by the mate of the *Grace* in the schedule of the claim of that vessel in the British Argument. This claim undoubtedly was made by error. The testimony did not establish that there was any mate of the *Grace* at Sitka who was treated by the authorities of the United States as the mate, and there is no evidence that he was detained at Sitka under the same conditions as the other captains and mates.

All claims for the sufferings and hardships of the members of the crews of the various vessels which are not specified in the table taken from the British case, as presented to the Tribunal of Arbitration at Paris, are personal claims, and by the terms of the Convention are excluded from the consideration and jurisdiction of this High Commission. Under all

internat
of clam
of the
require
separat
their c
jurisdic
made
various
time w
tion at
to the

The
were p
are all
and im
the exc
of the
laska t

Cour

Wha
were esp
1887 sta
captain
and for
that we
the cap
general
gal arre
amount
will, we
The sai
of the c
with.
put tha
always
to bolst
on acco

Fro
the sta
sidered

international commissions required to find the amount of damages for each person, the claimants, members of the crews of various vessels, have been uniformly required to present claims for damages and sufferings separately; and unless such claims were presented, their consideration has been held to be beyond the jurisdiction of the Commission. The personal claims made on behalf of the members of the crews of various vessels in the British Argument for the first time were not presented to the Tribunal of Arbitration at Paris, and no such claims were ever presented to the United States.

The claims set out in the schedule above, which were presented to the Tribunal of Arbitration at Paris, are all for damages arising by reason of "illegal arrest and imprisonment," and "sufferings and losses," with the exception of the claim of Captain Warren, master of the *Dolphin*, "navigating four vessels from Unalaska to Sitka."

Counsel for Great Britain stated:

What I want to refer to is this: The personal claims that R., 1201, line 66. were especially placed before the Paris Tribunal for 1886 and 1887 stand on a different basis altogether. In 1886 all the captains were actually arrested, convicted, and imprisoned, and for that they put a claim in, and you may have noticed that we have been particular not to go into the details of what the captains lost in the way of wages, but to claim under the general loss of the venture. The claims were put in for illegal arrest and imprisonment of the captains and for such an amount as this court, *acting in the place of a jury, if you will*, would give to a person illegally arrested and imprisoned. The same with the cases of 1887, where the personal liberty of the captain and mate was to a certain extent interfered with. The amount and extent is a matter of degree, but we put that forward on a different basis altogether, and it has always been so done. We have not attempted in this case to bolster up or enlarge the case of any particular captain on account of loss of wages, or anything of that kind.

From the nature of the claims made at Paris, and the statement of counsel, these claims are to be considered by the High Commissioners as claims for

damages arising by reason of the alleged illegal arrest and imprisonment of the captains and mates of the schooners seized in the years 1886 and 1887.

The testimony establishes that in the year 1886 a charge was made against the captains and mates for violation of the municipal laws of the United States, prohibiting the taking of fur seals in the waters of Bering Sea. After reaching Sitka the testimony conclusively establishes that the men were never restrained of their liberty, except that they were compelled to remain in Sitka; that they could go and come as they chose, and that, as a matter of fact, the men did have complete control of their own movements in Sitka. They were brought before the court and sentenced, but prior to the sentence they were not restrained in any place under lock and key. A guard was never placed over them, and they were never, at any time, *in jail*. One of the jury rooms in the court-house at Sitka was set aside for their use. This room was large and comfortable. They were provided with food regularly by the marshal, and could, during the day and during the night, if they so wished, occupy themselves about Sitka at their own will. After the sentence of the court they were restrained of their liberty by being compelled to remain in Sitka. They could go out of the room provided for them at any time they desired; no guard was placed over them, and the room in which they remained throughout the day and in which they slept at night was never locked against their exit.

In the year 1887 no formal charge was ever preferred against the masters and mates. They were never detained or restrained in any way, save that they were compelled to stay in Sitka until the 9th day of September, when Capt. James D. Warren says:

R., 1146, line
28.

Q. September 9 we were all called in and released, and are getting ready to go to Victoria [reading from a book]. Is that correct?

A. Y.
Q. T.
A. T.
bound
Q. T.
A. Y.
Joh
United
the tri
was cl
W.
the U
Grace
Both
impris
shows
liberty
parted
And
was in
away
that he
The
ants re
in 188
witness
whose
ignora
ligent
alone,
testim
year
of the
Alask
the U
them
dicted
substa
Ma

A. Yes.

Q. To whom does the word "we" refer?

A. That means all of us masters and mates that were bound over to appear at court.

Q. The masters and mates of these four schooners?

A. Yes.

John Reilly, of the *Dolphin*, was employed by the United States marshal, while he was at Sitka, to make the trip on the *Grace* to Unalaska, as mate, when she was chartered by the United States marshal.

R., 1195, line 54.

W. Petit, master of the *Grace*, was employed by the United States marshal to act as captain of the *Grace* on this trip to Unalaska.

R., 1165, line 40.

Both Petit and Reilly have personal claims for imprisonment, suffering, and loss, and the testimony shows that not only were they not restrained of their liberty, but that they were actually employed, departed from Sitka, and paid for the services performed.

Andrew D. Laing, mate of the *Sayward*, while he was *imprisoned*, made a trip to Victoria, remaining away from Sitka until a few days prior to the time that he finally departed for home.

The only testimony adduced on behalf of the claimants relative to the detention of the masters and mates in 1886 was that of one Marketich, who was the first witness sworn before this High Commission, and whose testimony needs no comment. This person was ignorant, unable to speak the English language intelligently, and absolutely unworthy of credence. He alone, of all the witnesses who were produced, gave testimony that the mates and captains at Sitka, in the year 1886, were treated in a manner, by the judge of the court of the United States in the Territory of Alaska, not becoming a judge of one of the courts of the United States. He says that the judge called them "robbers." This testimony is directly contradicted, and was never, throughout the entire Record, substantiated by the testimony of any other witness.

R., 74, line 25.

Marketich also, in answer to a question put by the

Commissioner on the part of Her Majesty, said that the room in which all the masters and mates slept was only 10 by 12 feet in size. On cross-examination this witness said:

Q. And the room where you slept in, or were confined in, was a room just over the judge's room?

A. Yes, sir.

Q. The jury room?

A. Yes, sir.

This room, it was afterwards established by the R., 500, line testimony, was "about 30 to 35 feet long by about 54. 15 feet wide."

R., 71.

The testimony of Marketich is brief. No weight was given the story by those who heard the witness at Victoria.

Capt. Charles E. Raynor was examined fully and in detail relative to the treatment of the captains and mates at Sitka in 1886 by the authorities of the United States. The testimony of this witness bearing on this subject was never denied or contradicted in any of its details, and throughout the session of this High Commission at Victoria the account, as given by Captain Raynor, of the occurrences at Sitka was taken as the true history. Every witness who testified thereafter, relative to this feature of the claims, confirmed in some of its details the statement of Captain Raynor, and denied it in none.

R., 496, line 20

Captain Raynor stated that the captains and mates were not confined at Unalaska prior to the time that they were taken to Sitka on the revenue cutter *Corwin*; that he had seen Captain Ogilvie and the mate Blake, of the *Carolena*, ashore, and that no orders were given that they should remain on board their vessels.

R., 496, line 37.

Q. After you got to Sitka, Captain Raynor, what steps were taken by the officers in regard to your arrest and detention?

A. Well, they told us that we could consider ourselves under arrest.

Q. Were you bound over to appear?

A. We were bound over on our own recognizance.

Q. And were you given your liberty during the interval?

A. Yes, sir.

Q. Did you take advantage of that liberty?

A. We did. At least for a few days everybody went around. We were on our own recognizance, and they went for four or five days and then surrendered it, and then they let us go around just the same, anyway.

Q. What was the object of their surrendering their recognizance?

A. Well, because *we thought it was easier to go and eat and sleep in the jury room than it was to go on board the vessels.*

Q. And before they surrendered their bail they had lived on board their vessels, had they?

A. Yes, sir.

Q. That includes Captain Ogilvie and Mate Blake?

A. Yes, sir.

Q. And, so far as you know, the officers of the other ships that were there?

A. Yes, sir.

Q. These ships were the *Thornton* and the *Omcord*?

A. Yes, sir.

Q. Were they compelled to sleep in that room, or to remain there—that is, before the trial we are talking of now?

A. No, sir; they could have gone on board the vessel and slept on board her, or whatever they liked.

Q. The fact is that they actually selected this place to sleep in preference to the vessel?

A. Yes, sir.

Q. *During the day they were confined within the limits of the court-house?*

A. *Not at all.*

Q. After the arrival of the captains and mates of the *Thorn- R.*, 498, line *ton* and *Omcord*, were they complained against formally? 11.

A. Yes, sir; they were.

Q. Were they arrested in the same manner that you were?

A. Yes, sir; they were.

Q. *Were they restrained of their liberty in any way up to the time of their trial?*

A. *No, sir.*

Q. Now, just tell the Commissioners about where the mates and captains slept at Sitka before they went to the jury room. I believe the *Carolina*, the *Omcord*, and *Thornton*

were left at Unalaska, so prior to the time they went to the jury room where did these men sleep?

A. They slept aboard the *San Diego*.

Q. That is your boat?

A. Yes, sir.

Q. Did they have their own bedding?

A. Yes, sir.

Q. And about how long did they stay on the *San Diego* before they decided to go into the jury room and sleep?

A. I think it was three days.

Q. When they surrendered their personal bail and asked to be allowed to sleep at the jail, did they?

A. Yes, sir.

Q. Now, is that just the way the thing occurred, or were they compelled to go to the jury room and sleep?

A. No, sir; that is just the way the thing occurred; they done it of their own self; asked the marshal to let them sleep there and also eat there.

Q. And he complied with their request?

A. Yes, sir.

Q. It was a step taken for their personal comfort, was it?

A. Yes, sir. They done it because they did not like—of course the *San Diego* was anchored some ways offshore—and they didn't like to pull back and forth aboard of her to get their meals and sleep. *I also done it myself on the same account.*

Q. When they went into the jury room did they take the same bedding that they brought off their respective boats off the *San Diego*?

A. They did; yes, sir.

Q. And during the time that they slept in the jury room did they make use of this bedding?

A. Yes, sir; all the time.

Q. Was there any abuse on the part of any Federal officer there?

A. I never seen any nor ever heard tell of any.

Captain Raynor then said that there was no complaint about the food that the men were supplied with.

R., 500, line
43.

Q. Were there any complaints made by any of the mates or captains as to the manner in which they were treated there?

A. No, sir.

Q. Or the words that were used in reference to them?

A. No, sir; I never heard of them.

Q. Did you hear the word "robbers" used in the charge of the court?

A. I did not; no such word.

The captains and mates were then tried by the court.

Q. What liberty did they have?

A. Well, they could go all over the top of the court-house, in the court room, and all around out around the porch, down in the yard, in fact anywheres in Sitka, by going and asking permission of the marshal.

Q. Did you ever see any of these men outside of the jury room, or away from the immediate vicinity of the court-house during this time of confinement after that first sentence?

A. Yes, sir.

Q. Where did you see them?

A. Well, I have seen them out in the street around Sitka and in different stores; I couldn't give the name of the stores—who kept them.

Q. Did you yourself go out during that time?

A. I did; yes.

Q. Were any of you locked in or guarded during that time?

A. Well, there was none of us locked in at all; they had a man up there for a few days who was supposed to be a guard, but he never stopped us from going anywheres that we wanted to.

Q. After the fifteen days elapsed which you speak of as being the time you believed the other mates and captains served, tell us what occurred; how they were released?

A. Well, the marshal released them, and they went right away on the steamer to Victoria.

Q. Were they released in order to take a boat to Victoria; did it not leave the next day?

A. Yes, sir; they were released at the time the steamer was there so they could take the boat and not be detained in Sitka any longer than possible.

Q. After the sentence of the court was there any difference in the treatment of the men, both as to the fare that they were given and as to the place where they were allowed to sleep and as to the bedding they had?

A. No, sir; none at all.

Bearing upon the claim that the captains and mates were put in jail and kept under lock and key, the story of the disappearance of Capt. James Ogilvie

R., 499, line 40. discloses that these men were allowed to go as they desired while they were in Sitka. Captain Ogilvie was ill with a fatal disease when he arrived at Unalaska. The surgeon of the *Corwin* took him aboard the cutter and cared for him on the voyage to Sitka. After the arrival at Sitka, Captain Ogilvie disappeared. Later his body was found in the woods near Sitka.

Cross-examined relative to the treatment that was accorded the masters and mates, Captain Raynor said:

R., 514, line 55. Q. Now, then, did you have a guard over you before the trial?

A. No, sir.

Q. The door was never locked?

A. No, sir.

Q. Did a guard stay there at night?

A. Yes, sir.

Q. Was the guard armed?

A. He was not.

Q. When you went out did the guard go with you?

A. No, sir.

Q. Who did?

A. Nobody.

Q. Who went out?

A. I went out myself.

Q. Anybody else with you?

A. In fact they all went out.

Q. You had to get leave?

A. I had to ask the marshal; and by asking the marshal we could go out.

Q. Did you have a light at night?

A. Yes, sir.

Q. Did you sleep on the floor?

A. We slept on a mattress on the floor; yes, sir.

Margtkich testified that while at Unalaska the crew were confined aboard the *Onward* and were unable to leave the ship, and that all the crews were confined aboard their respective vessels.

James Munger, a witness called on behalf of Great Britain, testified:

R., 637, line 60. Q. Will you tell us, Mr. Munger, how long after you got into Unalaska did you leave on the *St. Paul*?

A. About a week, I think.

Q. And you stayed on the *Carolina* all that time?

A. No.

Q. Had you been ashore?

A. Yes.

Q. Back and forth?

A. Yes; out fishing.

Capt. Louis Olsen, testifying relative to the seizure R., 1044, line 35.
of the *Anna Beck* in 1887, said:

Q. Where did you sleep?

A. On the floor in the jury room on our own blankets.
The jury room was about half the size this hall.

Q. How long did you remain in that room?

A. Until the 10th or 12th of September.

Q. Could you have got away before?

A. No, sir.

Q. What discipline was there while you were in that room;
had you to be in at any hour?

A. I did not hear anything to that effect.

Q. You came and went as you pleased?

A. Yes. There was no restriction made on me that I heard.

Q. Were you ever tried?

A. Well, the *Rush* arrived and I was up for trial next day.
In fact, they were trying the case of the *Sayward*, and I supposed I would come next. The mail steamer *Anaconda* arrived and the judge adjourned the court until he would receive some mails. The next day I was informed by Captain Warren that we were clear to go any place.

Q. You were told that without going into court?

A. Yes, sir.

Q. And you immediately went home?

A. As soon as the mail steamer was ready to leave we all went on board, myself and the mate and Captain Warren, and the captain and the mate of the *Sayward*.

Q. Who paid your passage?

A. Captain Warren at the time went good for it, and I had to pay it myself on my return to Victoria, as far as I can recollect.

Q. When did you get to Victoria?

A. I can not say positively, but I think it was in the neighbourhood of the 20th of September.

Q. Was a guard placed over you?

A. No, sir.

Q. Were the doors locked?

A. No.

Q. You could come and go as you pleased?

A. Yes; I believe we could. In the daytime we did so.

R., 1064, line 41.

Q. How do you know that when you had no guard placed over you?

A. Well, Judge Dawson told us at the time we arrived there that we were in charge of the United States marshal. That is the words he used.

Q. How did the United States marshal show that he had you in charge?

A. Well, by supporting us in food, I suppose, as long as we were there.

Q. And you were allowed to go about the streets?

A. Yes, sir.

Q. And you were allowed to go anywhere you pleased?

A. Sitka is on an island, and we could not go any further.

Q. You never went up to Indian River?

A. Yes, I did.

Q. Did not anyone stop you?

A. No.

Q. Were you ever interfered with in any such trip you took about Sitka?

A. Not that I remember; no, we were not.

Q. Were you ever tried?

A. No, sir; but the *W. P. Sayward* was on trial that day.

Q. Were any one of the masters or the mates tried?

A. No, sir.

R., 1065, line
5.

Andrew D. Laing, testifying in his own behalf, said:

Q. What was done with the schooner?

A. She was brought inside, into Sitka Harbor.

Q. What was done with you on that morning?

A. We got in there between 7 and 8 o'clock. The trial was coming off of the crew of the *Anna Beck* and the *ChALLENGE*, and they tried us the same day.

Q. How did you know you were going to be tried; what notice was given you?

A. The deputy marshal says, "You better come up to the court, the trial is going on of the other two vessels, and they will try you at the same time." So we went up in the court.

Q. What happened when you got into court?

A. We were asked by the judge—Judge Dawson—if we were sealing, and we told him we went there to hunt—to seal; they all gave the same answer.

Q. What happened after that?

A. We were bound over to stay in Sitka until the *Rush* arrived. The judge told us to behave ourselves and we would be all right.

Q. How long did you stay in Sitka?

R., 1097, line
13.

A. Fr
the *Rus*

Q. Yo
month

A. Fe

Q. H

A. B

left was

Q. Y

come a

A. I

Q. H

A. I

way ba

Q. V

A. T

Q. V

A. I

sion to

was n

back

trial v

Q. I

A.

They

Q.

A.

Q.

A.

as lon

Q.

come

A.

M

beh

Q.

A.

ther

Q.

A.

us t

cam

Q.

A.

Q.

A.

Jud

A. From July until October; until the trial came off; until the *Rush* came down.

Q. You say that in 1887 you came away from Sitka in the month of October? R., 1098, line 37.

A. For good; yes.

Q. How do you fix that date?

A. Because we all came away together; the only one we left was Captain Ferey.

Q. You say you came away for good in October. Did you come away before that?

A. I did; I came away in August.

Q. How long did you stay away then?

A. I arrived here (Victoria) on Saturday and I was on my way back on Monday.

Q. Why did you go back?

A. To stand trial?

Q. Why did you come away?

A. I went to Judge Dawson and asked him for permission to come home and see my people, and he said there was no trouble as long as I gave my word and honor to come back and stand trial; and I did, and went back and stood trial when it came off.

Q. Where did you stay in Sitka while you were there? R., 1098, line 68.

A. In the barracks, in jail. I lived with the marshal. They gave us the jury room to live in.

Q. And furnished you with provisions?

A. Yes.

Q. You had liberty to leave the barracks?

A. Yes; we could go all over Sitka, wherever we pleased, as long as we behaved ourselves.

Q. Did you have to furnish a bond when you left Sitka to come to Victoria?

A. No; only gave our own recognizance.

Michael F. Keefe, called as a witness in his own behalf, testified: R., 1121, line 64.

Q. After you got to Sitka, tell us what was done to you?

A. We were taken before the marshal the night we arrived there.

Q. Who took you?

A. The officer that had charge of the schooner. He took us to the marshal, but we did not see the marshal, and we came back on board the *Challenge* with the officer.

Q. When you came back what did you do?

A. Stayed on the ship that night.

Q. The next day what did you do?

A. The next day or the day after we were brought before Judge Dawson. I think it was the day after.

Q. What was done with you when you got before Judge Dawson?

A. We were charged with sealing illegally in Bering Sea, and told we would have to wait for our trial until the *Rush* would arrive there.

Q. Was that told to you personally?

A. It was told to us all when we were in the court-house.

Q. Where were you sent to?

A. We were sent nowhere. We were let go anywhere we liked on our own bail.

Q. Did you give bail.

A. There was no giving in it. I had nothing to give. He told us he would let us out on our own bonds of \$500.

Q. Did you come back before the court again?

A. We had to go back two days afterward.

Q. What happened then?

A. We were getting hungry, as there was nothing on board the *Challenge*, and we had to go and see what the judge was going to do for us.

Q. What did you say to the judge?

A. We told him how we were situated; that we had nothing to eat and no place to stay, and he handed us over to the marshal.

Q. Where did the marshal take you?

A. The marshal showed us a place in the court-house.

Q. That is in the grand-jury room?

A. Yes.

Q. You were allowed to sleep there, were you?

A. Yes.

Q. I believe there was not a guard put over you?

A. No.

Q. Did they supply you with food?

A. Yes.

Q. And up to what time did you stay in that way in Sitka?

A. I think it was the 12th of September we left.

R., 1124, line
33.

Q. *During the daytime you were not compelled to stay in the room?*

A. No; we could go in and out whenever we liked.

Q. Around the streets of Sitka?

A. Yes.

Q. Where did you take your meals?

A. In some room in the building; I do not know what place it was.

Q. Was it not with the marshal?

A. No; not with him.

Q. You had the same things, practically, as the marshal had; you had the same sort of table?

A. A

Q. W

A. Y

Q. A

A. Y

Q. A

A. Y

Q. A

A. Y

Q. T

streets

A. N

Q. Y

A. I

Q. A

A. Y

Cap

treatm

school

Q. V

A. I

Q. S

that w

raigne

A.

Ca

ings

was

Ca

treat

Q.

capta

A.

Q.

A.

were

Q.

any

A.

Q.

the

A.

Q.

not

A. As far as I know, yes.

Q. Was a table set for you?

A. Yes.

Q. And you had chairs to sit down to the table?

A. Yes.

Q. And a table well provided for you?

A. Yes.

Q. And comfortable for you to eat there?

A. Yes.

Q. There was no guard accompanied you around the streets?

A. No.

Q. You used to go out fishing?

A. If we felt that way we could go fishing.

Q. As a matter of fact, some of them did go fishing?

A. Yes.

Capt. Charles E. Raynor testified relative to the treatment accorded the captains and mates of the seized schooners in 1887: R., 1248, line 64.

Q. Were you arraigned in 1887, or released on a bail bond?

A. I never was either.

Q. So far as you know, were any of the mates or captains that were taken to Sitka in 1887, during your presence, arraigned or bound over to appear at some later time?

A. No, sir.

Captain Raynor was testifying relative to proceedings after he arrived there on the *Allie I. Alger*, which was seized on the 25th of August. R., 1251, line 56.

Capt. James D. Warren, examined relative to the treatment of the masters and mates in 1887, said: 1.

Q. After the seizure of the vessels in 1887 did you see the captains and mates there in Sitka?

A. Yes.

Q. They were all in Sitka together?

A. Yes; I don't remember how many, but I know they were there.

Q. And were they in custody, any of them, under arrest in any way, or restrained of their liberty?

A. No more than bound over, I think.

Q. Do you know whether anything was signed over before the order for release came?

A. I would not like to say positive.

Q. You were treated like other captains there, were you not?

A. I know what was done with me.

Q. You were not made a pet of specially?

A. I don't know that I was.

Q. And what was the treatment accorded, so far as you knew—you were captain of the largest fleet that went in the port at that time—by the United States authorities?

A. I was called into court, and the captains and mates with me, and we were bound over in our own recognizance to appear at the trial.

Q. Did you sign anything?

A. I don't remember signing anything; I remember we had to hold up our hand in court.

Q. And then you were told to go wherever you liked?

A. As long as we were back at the trial.

Q. How long after that were you notified of your release?

A. I think it is the 9th of September that we were notified of our release.

Q. You are pretty sure about that date?

A. I can soon tell. I think that is the date. [Refers to memorandum.] On the 9th of September we were called in and released.

Q. Were you all together there, the captains and mates of the detained vessels?

A. I think we were. I think all the captains and mates that were there were released; at least my entry goes in that way. We were all called in.

Q. And told you were released?

A. I should suppose that means the lot.

Q. Were you shut up in any room, or told to go to any room, or anything of that sort?

A. I was allowed to go wherever I saw fit.

Q. And the others were, too?

A. I think the others were under the same liberty.

Q. And were you treated in a polite and courteous way by the United States marshal and authorities?

A. I have no fault to find with that myself.

These claims, which, when originally presented to the Government at Ottawa for the purpose of being forwarded to the Home Government, were reduced in amount at the request of the privy council for Canada, because they were deemed excessive, and referred back to the parties making the claims, who consented to a reduction of one-half, have without any apparent reason been again increased from the time of the presentation at Victoria.

The
amount
stages
Govern

Menroe . .
Markitch .
Guttorius .
Norman . .
Ogilvie (d .
Blake . . .
Warren . .
Reilly . . .
Fercy . . .
Laird . . .
Olsen . . .
Keefe . . .
Petit . . .
Lundberg .

The
relativ
senten
apply
ters a
gal an
The
tirely
mater
libert
they
have
awar

Th
claim
High
ment
Th
prop

The following statement shows the increase in the amount demanded by these claimants at the various stages of the arbitration proceedings between the two Governments.

	Tribunal at Paris.	Claim at Victoria.	Final claim.
Monroe	\$4,000	\$2,500	\$4,000
Marketch	2,500	2,500	4,000
Guttormsen	4,000	2,500	4,000
Norman	2,500	2,500	4,000
Ogilvie (died before trial)	2,500	2,500	4,000
Blake	2,500	2,500	4,000
Warren	2,635	3,000	4,000
Reilly	1,000	2,000	4,000
Fercy	2,000	2,000	4,000
Laing	1,000	2,000	4,000
Olsen	2,000	2,000	4,000
Kiefe	1,000	2,000	4,000
Peut	2,000	2,000	4,000
Lundberg	2,000	2,000	3,000

The observations elsewhere made in this Argument, relative to the extortionate nature of the claims presented by this class of men to international tribunals, apply with added weight to the claims of these masters and mates for damages arising from alleged illegal arrest and imprisonment.

The United States assert that its officers acted entirely without malice at Sitka, that the captains and mates were never imprisoned or restrained of their liberty, and that there was no detention except that they remained in Sitka for a time. The claimants have shown no actual damage, and no sum can be awarded for pain and suffering or injured feelings.

The argument of the motion made to dismiss the claim of James Gaudin from the consideration of the High Commission was postponed until the final argument.

The United States contend that this claim is not properly before this Commission.

Pleadings,
claim No.
11.

R., 1808, line 30. A stipulation consenting that the High Commissioners might report the facts to their respective Governments regarding this claim was filed.

R., 1216, line 20. The Record discloses that Captain Gaudin arrived in Sitka on the 5th day of September, 1887, and left for Victoria on the 9th day of September; that he never was restrained of his liberty in any way; that he never was detained by the authorities of the United States, and that he suffered no hardship.

The
behalf
claim
at Vic
of sup
equip
the w
partur
and th
about
resent
28 to
month
Argu
Th
13th
of Ju
by th
tion o
hibiti
cutte
there
the C
State
artic
cutte
Th
the
total
T

gh Commis-
pective Gov.

udin arrived
887, and left
ber; that he
y way; that
f the United

THE CAROLENA.

CLAIM No. 1.

The presentation of this claim, in the Argument on behalf of Great Britain, radically differs from the claim as presented by the testimony of the claimants at Victoria. The evidence offered relating to the cost of supplying Munsie's trading station, the cost of equipping a sealing vessel for a hunting voyage on the west coast of Vancouver Island before the departure of the ship for the voyage to Bering Sea, and the vouchers placed in evidence, aggregating about \$6,000, which, according to the claimants, represented the cost of outfitting this small schooner of 28 tons for a sealing voyage in Bering Sea of two months, receive no consideration in the British Argument.

The *Carolina* entered Bering Sea in 1886, about the 13th of June, and commenced hunting about the 1st of July. She was seized on the 1st day of August by the United States revenue cutter *Corwin* for violation of the municipal laws of the United States prohibiting the taking of fur seals in Bering Sea. The cutter took her to Unalaska, dismantled her, and thereafter the vessel, outfit, and cargo were libeled by the Government of the United States in the United States district court of Alaska. The inventory of the articles on board, as prepared by the officers of the cutter, is in evidence.

The decree condemning the vessel was entered on the 4th day of October, 1886. She then became a total loss to her owners.

The property described in the inventory is the run-

R., 376, line
66. An-
swer of the
United
States
Pleading.
No. 1.

R., 52.

Ex. 13, G. B.
Cl. No. 1,
Exhibits,
p. 27.

ning gear and necessary equipment of the vessel. There were but a few articles removed from the *Carolena* for which the United States, in any event, would be liable to pay beyond the value of the vessel.

The property taken, not included as a part of the vessel, is set out in a receipt given to Captain Abbey, commanding the revenue cutter *Corwin*, by the United States marshal. The property there described consists of 685 fur-seal skins, 12 pup skins, 1 hair-seal skin, 1 yawl, inventoried by error, 4 canoes, 4 gaffs, 2 spears, 13 bags of flour, 2 boxes of bread, etc. The other articles named are either of no value or belong properly to the ship.

Ex. No. 12, G. B. Cl. No. 1; Exhibits, p. 27.
R., 495, line 60. Capt. Charles E. Raynor was present and saw Lieutenant Cantwell take the inventory.

There was some evidence offered on behalf of the claimants showing that prior to the time the inventory was taken by the officers of the cutter certain provisions were removed to the steamer *St. Paul* for the purpose of supplying the crew of the *Carolena* on their trip to San Francisco, where they were sent at the expense of the United States.

David Russell, a witness called on behalf of the claimants, stated the amount of provisions that were taken aboard the *St. Paul*. The value of the articles is inconsiderable.
R., 584, line 53.

The vessel, being a total loss to her owners, the measure of damages is the cost of replacing the vessel at the port of departure in the condition in which she was when seized, together with the value of the seal skins, guns, and canoes on board, and the supplies not properly a part of the ship.

The value of this vessel, of about 28 tons, has been discussed at length in another part of this Argument.

R., 1142, line 53. The amount charged for the four canoes and outfit is exorbitant. Captain Warren testified that \$20 was the cost of the canoe on the *Sayward*. In the sched-

ules prepared by the owner of the *Ada*, the charge is made, 3 canoes, \$46; being somewhat over \$15 each. The testimony of other witnesses in the Record shows beyond question that the values placed upon these canoes by Munsie was fictitious. R., 1229, line 42.

John Cotsford testified that one of the canoes was bought for him; that he was there when it was purchased; that "I had the largest, and I suppose considered a little the best." R., 375, line 24.

Q. How much did it cost?

A. Eleven dollars, I believe; that is what I understood the price that was paid for her.

He further testified that he had knowledge of the value of canoes, and that these canoes which he saw aboard the *Carolena*, and one of which he used as a hunter, were worth between \$10 and \$15 each. The price charged in the schedule is \$62 each. R., 375, line 62.

The item "one boat, \$100" is a charge made for a boat which, according to the testimony, was lost before the vessel was seized. John Cotsford, who was on the vessel when seized, said: "I believe that the boat was lost on the way up." The captain of the *Carolena* wrote a letter at Unalaska in which he stated: "Thirteen days after we left Clayoquot we were in Bering Sea; we lost the boat from the stern." This was prior to the seizure. The foundation for this claim is that by mistake the officers of the cutter inventoried one boat as belonging to the *Carolena*. The boat they inventoried belonged to the *Thornton*. Inspecting the inventory of the *Thornton*, it will be discovered that although she carried four boats, only three were inventoried. The claim made on behalf of the *Thornton* is for four boats. R., 383, line 20.
R., 391, line 57.

The claim "Cash, Ogilvie, \$500," is without any foundation whatever. Munsie testified that upon the vessel leaving in May Ogilvie had \$500 "for incidental expenses and advances to men on voyage, etc." This money was undoubtedly expended by the cap- Ex., 45, line 13, Exhibits, p. 86.
Argument on behalf of Great Britain, p. 102, line 15.
Voucher No. 30, Ex. No. 10, Exhibits, page 19.

tain of the ship. There is no testimony that Ogilvie had the money at the time of the seizure, and unless the owners of the ship intend to charge the officers of the United States cutter with misappropriating this fund there is no reason for the claim.

R., 499, line
67.

Captain Ogilvie wandered off into the woods at Sitka, and was afterwards found dead.

The United States denies any liability whatever for this money, and there is no evidence that it was ever in the possession of the United States, and if it had been taken by the officers of the United States from Captain Ogilvie, it *would have been returned*.

The charge for rifles and shotguns is out of all proportion to their real value.

The item "Belyea's bill, \$750" rests upon the following testimony of Munsie:

R., 139, line
44.

Q. The contract with Mr. Belyea was not in writing, I think?

A. No; not in writing.

Q. It was made up at the time, though?

A. It was made at the time he undertook to look after the case.

Q. You are bound to pay him \$750?

A. If I do not get the claim I might not pay him; I might object to it.

Q. But you agreed to pay him \$750, at all events, for his services?

A. There might have been a condition.

Q. Was there? We don't want any statement as to what might be, but what is.

A. I won't state positively whether I agreed to pay him; positively whether the claims were paid or were not paid, but I rather think there was an understanding that if they were not paid I would not have to pay him quite as much.

Q. Did you name any amount that you should pay him, at all events?

A. I do not remember that there was.

R., 139.

Regarding the charge of Willoughby Clark "Charges at Sitka, \$500," Munsie testified that he regarded the charge as excessive, and refused to pay it; but that Clark seized some skins of his in Sitka and rather than have a lawsuit regarding the claim,

he paid the amount. This seizure of skins was made several years after 1886, and because Mr. Munsie was willing to allow Clark to secure from him an exorbitant sum the Government of the United States is not liable to repay that exorbitant amount, expended on account of his own negligence in not protecting his interests.

The item \$352 for insurance covers the charge for a year. The insurance would be canceled immediately upon the boat being seized and the premium, if paid in advance, refunded. The policy is not in evidence. If the owner is paid for the value of the skins taken before the seizure he will receive the benefit of the insurance to that time.

The item "J. D. Warren, expenses to Ottawa, putting in claim, \$152," is for expenses in connection with this claim against the Government of the United States, and can not be allowed.

The item "Time and personal expenses of owner, \$250," is absolutely without testimony showing any time or money expended in connection with this claim. In any event, the United States is not liable for the time of the claimant used in the endeavor to secure from this High Commission an award.

The item "Expenses remainder of crew, say \$50," is without any testimony to support it.

The item "Say one-half slop chest, \$100," is not taken from the Record.

The property aboard the schooner was inventoried by the United States officers, and the only other property removed from the vessel was that put aboard the *St. Paul*.

The claim for "estimated value of provisions and ammunition which would have been left after a full voyage, say \$200," is covered by the value of the property inventoried by the officers of the cutter and the property put aboard the *St. Paul*.

A portion of the small items following in the schedule belong properly to the ship.

The item, "Estimated value of articles that were doubtless on board vessel, but which can not now be specially mentioned, say \$200," is without foundation.

The officers of the revenue cutter specifically mentioned the property taken from the *Carolena*, with the exception of the property taken aboard the *St. Paul*.

The United States seized and retained the seal skins. Their value is the market price ruling in Victoria at the time they would have been placed upon that market for sale by the owners.

The claim for estimated catch and for damages in the year 1887 can not be allowed. This case is one of total loss, and no decision can be found in support of allowing future earnings in case of total loss.

The item "expenses and hardship of crew, 9 men, at \$500 each, \$4,500," is without foundation, in fact; and its consideration is beyond the jurisdiction of this High Commission. The claims are personal claims, and are not included in the Convention.

The items "for illegal arrest, detention, imprisonment, and other hardship of James Ogilvie, master of *Carolena*" and of "James Blake, mate of *Carolena*," \$4,000 each, are discussed at another place in this Argument, together with all personal claims. Captain Ogilvie, however, died by his own hand, and in his case there was no trial.

R., 500, line 1.

R., 110.

Although the claimants have not asked this High Commission to award \$6,000, claimed as the total expense of outfitting the *Carolena* in Bering Sea for the voyage of 1886, the amount has not been lessened, but, on the contrary, as shown, is increased without any apparent reason, from the time that the claim was filed at Victoria.

The United States claim that Andrew J. Bechtel, a native-born citizen of the United States of America,

was an
the seiz
no dam

Will

Q. W
her (th

A. I

Patr
the U

Q. D

A. I

Q. V

A. I

Q. I

A. I

Q. A

A. T

Q. T

of the

A. I

Q. A

A. I

Q. T

stood

A.

Q. V

A.

Q.

who v

A.

TH

and t

that

Urqu

stair

Q.

did y

A.

Q.

A.

Q.

A.

Q.

had

was an owner of half of the *Carolina* at the time of the seizure, and that this High Commission can award no damages to the owners.

William Munsie testified:

Q. Who was the owner of her when you commenced to buy R., 87, line 6. her [the *Carolina*]?

A. I believe Donald Urquhart.

Patrick Hickey, called as a witness on the part of the United States, was sworn relative to the *Carolina*.

Q. Did you know the schooner *Carolina*?

R., 1022, line 41.

A. I did know the schooner *Carolina*.

Q. Were you a joint purchaser with Mr. Urquhart?

Line 50.

A. I invested money with Captain Urquhart.

Q. In the purchase of the ship?

A. In the purchase of the ship.

Q. About what year was that?

A. That was in 1884.

Q. To what extent did you furnish money in the purchase of the ship?

A. Five hundred dollars.

Q. And what was the total cost of the ship?

A. I was given to understand that it was \$1,000.

Q. You furnished half of the purchase price, as you understood it?

A. Yes, sir.

Q. You were at that time, I think, an American citizen?

A. I was.

Q. And you purchased her jointly with Mr. Urquhart, who was a British subject?

A. Yes, sir.

The witness then stated that the ship was repaired, and that her total cost after repairs was about \$2,000; R., 1023, line 18. that the vessel was registered in the name of Captain Urquhart, and that he had an agreement from him Line 40. stating that he was a half owner.

Q. Now, you got some proceeds when the vessel was sold, Line 50. did you not?

A. I don't know that I did, sir.

Q. Well, was the sale accounted to you?

A. The sale was made by Captain Urquhart.

Q. Who to?

A. I understood to Mr. Munsie.

Q. Now, do you remember what Mr. Urquhart told you he had received for the schooner?

- R., 1024, line 8. A. I do.
 Q. What was it?
 A. No; there was no writing at all. He rendered me \$1,000.
 Q. For your half?
 A. As he told me it was for the half.
 Q. Stated to you that he sold it for \$2,000 and your half was \$1,000?
 A. He so stated.
 Q. And that was the sale to Mr. Munsie?
 A. So far as I can understand—as I understood it at the time.

Munsie testified:

- R., 87, line 8. Q. In 1885 did you enter into negotiations for the purchase of any part of the *Carolena*?
 A. Yes; 21 shares.
 Line 22. Q. When you were buying the one-third and Matheson another one-third from Captain Urquhart, was there any valuation put on the vessel at that time?
 A. Yes; about \$3,800.
 Q. Were you to pay Urquhart at that rate?
 A. Yes; at that rate.
 Q. How did you pay for that vessel then? Did you pay all that amount of money in cash?
 A. No; I did not.
 Q. Did you pay a part of it in cash?
 A. I paid part cash.
 Q. And the rest was paid how?
 A. In two promissory notes.
 Q. Have you those promissory notes in your possession now?
 A. No; I have not.

Ex. No. 5, G. The bill of sale from Donald Urquhart to William
 B. Cl. No. Munsie, dated January 21, 1885, for 21 shares, or
 1, Exhib- one-third of the *Carolena*, is in evidence.
 its p. 3.

The consideration expressed in the bill of sale is
 “\$667 (said consideration money being value of one-
 third interest).”

- R., 87, line 36. Q. Was Matheson buying on the same arrangement?
 A. Yes; on the same rate.

The bill of sale from Donald Urquhart to Henry Matheson, who, at the time of the purchase of 21 shares by William Munsie, also purchased 21 shares, or one-third of the vessel, from Urquhart and Hickey

(the bill of sale being given by Urquhart because the boat was registered in his name), is also in evidence. The consideration expressed in the bill of sale is "the sum of \$667."

William Munsie purchased the remaining one-third of the *Carolena* on the 4th of February, 1885. This bill of sale is also in evidence, and the consideration therein expressed is "the sum of \$667."

The aggregate sum, as stated in the bills of sale, which was paid for the *Carolena* by Munsie and Matheson was \$2,001. This confirms Hickey's statement that he received \$1,000 for his half of the *Carolena* when she was purchased from him and Captain Urquhart by William Munsie. But Munsie states that each time, in addition to paying \$667, expressed in the bill of sale as the consideration, he gave promissory notes or additional cash for the balance of the purchase price, and that the price paid was always at the rate of \$3,800 for the entire ship.

Inasmuch as Patrick Hickey testified that the ship cost him and Urquhart about \$2,000, and that she was sold for \$2,000; that he never received but \$1,000 for his half interest, William Munsie, if this were all there was to the transaction, shows himself to be unworthy of belief. The promissory notes which he claims to have given in addition to the consideration of \$667 are not in evidence. No check was offered in evidence to support his contention that any additional sum was paid, and no witness supported his testimony.

On the 19th day of June, 1885, Munsie purchased from Matheson the one-third interest which he had acquired from Urquhart and Hickey, and the consideration expressed in that bill of sale is "\$667." Accordingly, on the 19th of June, 1885, William Munsie was the owner of the *Carolena*. He had paid, according to the bills of sale, \$2,001 for the ship.

The registry of the *Carolena* discloses that in Feb-

R., 88, line
50; Ex. No.
6, G. B. Cl.
No. 1; Ex-
hibits, p. 4.

Ex. No. 8, G.
B. Cl. No.
1, Exhib-
its, p. 5.

ruary, 1885, when Munsie purchased from Urquhart and Hickey the second third of the *Carolina*, that he executed a mortgage to Andrew J. Bechtel.

On the 4th day of February, 1885, Munsie was the owner of two-thirds of the *Carolina*, and he had paid therefor, according to the consideration expressed in the bills of sale, the sum of \$1,334. Munsie stated that he borrowed \$500 from Bechtel at this time. This was to avoid the conclusion, which the instrument itself would suggest, that he had mortgaged to Bechtel one-third of the vessel for \$667, exactly what he had paid for it, according to the bill of sale.

R., 89, line
43.

Q. What I want to get at is this: The consideration in that mortgage is stated at \$667; was \$667 the amount you actually borrowed, or was it more?

A. I borrowed about \$500.

Q. There seems to be the same amount stated in all these documents. For some reason or another it was put in here at \$667, but that was not the real transaction?

A. I think the amount was put in to cover interest. I would not be positive, but that is about the recollection I have of it.

Q. Did you settle that mortgage up in the following June?

A. When I bought Matheson out in June I borrowed some more money, canceled that mortgage, and gave one for \$1,000. I borrowed that from Mr. Bechtel.

Q. Is that the second mortgage you gave to the same man?

A. That is the second mortgage.

Ex. No. 9, G.
B. Cl. 1,
Exs., p. 5

This mortgage is in evidence.

The mortgage is on 32 shares of the vessel, and the consideration expressed is \$1,000.

It appears, then, that on the 21st day of January, 1885, Munsie purchased one-third of the boat, and February 4 purchased another third. The total sum paid was \$1,334, as expressed in the bills of sale.

At the time of purchasing the second interest in the boat, he executed a mortgage to Andrew J. Bechtel on one-half the interest that he held in the boat, viz, on one-third, for the sum of \$667, as stated in the mortgage. Munsie says that only \$500 was actually borrowed, and that the \$167 was to cover inter-

est. The
bear int
veyed, b
est in t
use of a
citizen
register

Muns
dated J
in the
the mo
execute
interest
this mo
and he
half of
sale, fo
interest

Thes
boat, a
receive
Mr. Mu
the bo
and the
actions
the bo
sale ar
\$667.

should
every
explain

The
conclu
expres
be fou
he pai
he fids
mortg

est. The mortgage, however, by its terms did not bear interest. The fact is that William Munsie conveyed, by mortgage bill of sale, one-half of his interest in the *Carolina* to Andrew J. Bechtel, and made use of a mortgage because Bechtel was an American citizen and could not have his interest in the boat registered in his name.

Munsie acquired from Matheson, by bill of sale, dated June 19, 1885, the remaining one-third interest in the *Carolina*, and on the same day canceled the mortgage for \$667 to Andrew J. Bechtel, and executed a new one for \$1,000, which did not bear interest. Munsie was, at the time of the execution of this mortgage, the registered owner of the entire vessel, and he conveyed 32 shares of the *Carolina*, or one-half of the vessel, to Bechtel by mortgage bill of sale, for the reason that Bechtel could not register his interest in his own name.

Ex. No. 9,
Exhibits,
p. 5.

These transactions, if Munsie paid \$3,800 for that boat, are absolutely unexplainable. If Mr. Hickey received but \$1,000 for his half of the boat when Mr. Munsie purchased it, Munsie paid but \$2,000 for the boat; and that being the fact, the bills of sale, and the mortgages to Bechtel indicate ordinary transactions. But if Munsie paid, as he swore, \$3,800 for the boat, the considerations expressed in the bills of sale are not explainable. Why the exact amount of \$667, which is the value of one-third of the boat, should have been used in every bill of sale, and in every mortgage, unless it was the amount paid, is not explained.

The effort of Munsie, however, was to avoid the conclusion that by reason of the peculiar amounts expressed in the mortgages given to Bechtel, he would be found to be a half owner. If his statement that he paid \$3,800 is false, and it is absolutely proven to be false by Patrick Hickey, his testimony that these mortgages were only mortgages, and were not given

to Bechtel in order to secure his one-half ownership, is not entitled to credence.

The mortgage of February, 1885, given at the time that Munsie owned two-thirds of the ship, covered but one-third the ship; and the mortgage of June, 1885, when Munsie was the registered owner of the entire ship, was placed on 32 shares. Why Munsie, when he owned the entire ship, should mortgage only half of it, is unexplained, and being unexplained is conclusive that Bechtel owned first 21 then 32 shares.

Exh. 9, G. B.
claim No.
1, Exhibits,
p. 5.

The mortgage of June 19 bears on its face convincing evidence of the fact that it was not given to secure the payment of any sum of money whatever. The words "together with interest thereon at the rate of" are stricken out, and the words "without interest" inserted; the words "per cent per annum on the day of" stricken out and "on demand" inserted; the words "next and secondly, that if the said principal sum is not paid on the said day — or — heirs, executors, or administrators, will, during such time as the same or any part thereof remain unpaid, pay to the said — interest on the whole or such part thereof as may for the time being remain unpaid, at the rate of — per cent per annum, by equal half-yearly payments on the — day of — and — day of — in every year," are stricken out, and the words "guns, ammunition, small arms" are stricken out. The power of sale clause is avoided by the day and year being left blank.

Exhibit 9.

Munsie produced receipts showing that the interest was paid on the second mortgage for \$1,000. If the High Commissioners will inspect these original receipts again, the conviction will be firmly established that no interest ever was paid on this mortgage. The receipts have the peculiar characteristic of being consecutively numbered, although extending over a period of nearly five years, and of being written on the same forms. On their face they bear evidence of

being all
that son
received
gatherin
me a co
Becht
thing to
had no
like the
and tha
were gi
him tha
Muns
transact
happen
sum ex
purchas
that he
in his o
A re
relative
Commis
hearing
execute
interest
Mun
lena we
spring
few se
down t
endeav
aboard
to Ber
that th
the spr
The
Q. O

self ownership,

being all prepared at the same time. Munsie testified that some of them were duplicates, and that he received them from Bechtel recently. "When I was gathering up my papers I asked Mr. Bechtel to give me a copy of the receipts." R., 90, line 14.

Why Munsie, Bechtel testified that Munsie had never said anything to him about any duplicate receipts; that he had R., 151, line 11.
mortgage only thing to him about any duplicate receipts; that he had had no blank receipts for the last four or five years like the forms used in the receipts put in evidence; and that the last receipts that he had given Munsie were given at least four years ago, when Munsie told him that he had lost one or two.

Munsie was cross-examined fully regarding these transactions. He stated, in order to explain how it R., 119.
happened that he paid \$500 in cash in addition to the sum expressed in the bill of sale at the time of the purchase of an interest from Urquhart and Hickey, that he sometimes kept \$10,000 in cash in a little safe R., 120, line 24.
in his office.

A re-reading of the cross-examination of Munsie relative to this transaction will convince the High R., 119.
Commissioners that the impression created at the hearing at Victoria that these mortgages were merely executed for the purpose of securing to Bechtel his interest in the vessel was the fact.

Munsie stated that he did not know that the *Caro-* R., 135, line 45.
lena went out on a sealing trip on the coast in the spring of 1886; that she might have brought up a few seals, but that her principal object was to go down to secure hunters. The impression that Munsie endeavored to make is that all the supplies put aboard the *Carolena* in February were for the voyage to Bering Sea, and for that reason he does not state that the *Carolena* had been sealing on the coast in the spring and used a part of the supplies.

The witness, Serault, testified:

R., 642, line 12.

Q. On which trip of the *Carolena* did he come to Victoria?

- A. I think it was when they quit sealing on the coast, as near as I recollect.
- R., 645, line 41. Q. They went up there first and before the canoes were put on board, and went sealing in the spring, in February, on the coast?
- A. Yes.
- Q. How many Indians went on that trip, the first trip, when they went sealing on the coast?
- A. That I don't know. I think it was six or eight canoes the *Carolena* carried.
- R., 145, line 32. Andrew J. Bechtel was called as a witness on the part of the claimants and testified that he had no interest in the *Carolena* in 1886 except as mortgagee.
- R., 147, line 30. It was developed on direct examination that he had signed as attorney in fact the claim of James Ogilvie, master of the *Carolena*, for damages from the United States. The witness stated on direct examination:
- R., 147, line 65. Q. And you were on board of her before she sailed?
- A. Yes, sir.
- Bechtel said on cross-examination:
- R., 153, line 30. Q. When you went on the ship, did you go below?
- A. No; I did not.
- Q. Didn't go below?
- A. I believe I did go in the cabin.
- Q. What did you go there for? To say good-bye to Captain Ogilvie?
- A. Yes.
- Q. Just went on to visit the captain?
- A. Yes; to see the captain; that is all.
- John Cotsford, one of the hunters of the *Carolena*, was called by the United States as a witness regarding the voyage of the *Carolena*, and testified:
- R., 375, line 3. Q. Whom did you tell this to?
- A. Mr. Bechtel.
- Q. Was Mr. Bechtel at that trading post that spring?
- A. He left here on the schooner with us and went down.
- Q. On what schooner?
- A. The *Carolena*.
- Q. Mr. John A. Bechtel, or Andrew Bechtel, otherwise called?
- A. Andrew Bechtel.
- Q. He started on the sealing voyage?

on the coast, as

the canoes were
g, in February,

the first trip,

or eight canoes

witness on the

he had no in-
mortgagee.

on that he had

James Ogilvie,
m the United

xamination:

he sailed?

below?

l-bye to Captain

the *Carolena*,
witness regard-
tified:

hat spring?
d went down.

htel, otherwise

A. He left here on the *Carolena* and went to Clayoquot with us.

Q. You knew him pretty well, did you?

A. Yes, sir; I knew him pretty well. I had been acquainted with him a year or two before that.

Q. Was he carried off on the *Carolena* by mistake or against his will?

A. I think not.

Q. He did not say good-bye to Captain Ogilvie before he carried him away, did he? You did not hear anything about his coming on board to say good-bye?

A. No.

Q. Well, who engaged in the purchase of canoes at Clayoquot?

A. Mr. Bechtel did the most of it.

Cotsford also testified that *Munsie* and *Bechtel* employed him to go as a hunter on the voyage of 1886. R., 373, line 38 et seq.

James Munger, a witness called on behalf of Great Britain, and one of the hunters on board the *Carolena*, testified:

Q. It has been stated that Mr. Bechtel was on board at the time she went up—is that correct? R., 631, line 49.

A. Yes; he went up with us.

David Russell, a witness called on behalf of Great Britain, testified:

Q. On that trip up on the *Carolena* did you stop anywhere? R., 589, line 35.

A. We stopped at Clayoquot.

Q. Was John A. Bechtel on board when you left here and stopped there?

A. Yes, sir.

Michael Serault, a witness called on behalf of Great Britain, testified:

Q. Did you see Mr. Bechtel on the occasion of the second visit of the *Carolena* to Clayoquot? R., 644, line 19.

A. I saw him when she was on her voyage to Bering Sea.

These three witnesses conclusively establish that Andrew J. Bechtel swore falsely when he testified that he went to the *Carolena* when she left for Bering Sea to say good-bye to the captain. The witness undoubtedly thought if he said he was aboard the *Carolena* on the voyage the conclusion would be

drawn that he was a part owner of the *Carolina*, and he therefore desired it to appear that he was in no way connected with the voyage.

Bechtel testified:

R., 145, line 14. Q. How long have you been engaged in the sealing business—about how long?

A. I can't say exactly as to a month; over three years.

Q. About three years, you mean?

A. About three years—longer.

R., 145, line 25. Q. Prior to 1886 had you anything to do with the sealing business?

A. No, sir.

Q. Had you anything to do with shipping?

A. No, sir.

Q. Did you know anything about ships up to that time?

A. No, sir.

Q. Had you owned any ship before then?

A. No, sir.

Q. Had you any share or interest in any ships of any kind up to that time?

A. Not any.

Q. And, in fact, had you in 1886 any interest in any ship?

A. Not any.

Q. Or in 1887?

A. No, sir.

Q. Or in 1888, as a matter of fact?

A. No, sir.

Q. Or in 1889?

A. No, sir.

Exhibit 99
(G. B.), Cl.
14, Exs., p.
274.

William Munsie was a witness called in his own behalf in the case of the *Pathfinder*, claim No. 14. The register of the *Pathfinder*, which Mr. Munsie knew was in the possession of the United States, disclosed these facts: That William Munsie had the entire title in his name to the *Pathfinder* up to the 18th day of December, 1885; that upon that day he conveyed sixteen shares to Frederick Carne, jr., his partner in business, and on the same day conveyed to William Munsie and Frederick Carne, jr., joint owners, thirty-two shares, and on the same day William Munsie and Frederick Carne, jr., mortgaged sixteen shares to Andrew J. Bechtel, for \$1,107, and sixteen shares to

M. N.
\$1,107

Mu
purch
at a c
it, one
affida
of the
Becht
or in
iar tra
haps,
them,
tion in
terest
that M
Pathfi
in the
acqui
in the
statem
ested
prior
1892

Mu
tion,
The
regist
or on
iar p
altho
that
tion
the
owne
\$2,0
her,

M. N. Bechtel, Andrew J. Bechtel's brother, for \$1,107.

Munsie had testified in the *Carolina* case that he purchased the *Pathfinder* at Halifax in the year 1885, at a cost of about \$4,500, "or within a few dollars of it, one way or the other." Accordingly, although the affidavits filed at Paris in connection with the claim of the *Pathfinder* did not disclose that Andrew J. Bechtel had any interest whatever in the *Pathfinder* or in its voyage, Munsie decided that two such peculiar transactions appearing on the register would, perhaps, not be viewed in the light that he would have them, and although not testifying on direct examination in the *Pathfinder* claim that Bechtel had any interest in the *Pathfinder*, he said, on cross-examination, that Mr. Bechtel, although he had no interest in the *Pathfinder*, was interested in the voyage and venture in the year 1889. He also stated that Bechtel acquired an interest in the venture of the *Pathfinder* in the year 1886. *This is a positive denial of the statement of Andrew J. Bechtel, that he was not interested in the sealing business until about three years prior to the time that he was testifying, which would be 1892 or 1893.*

Munsie had testified, moreover, on direct examination, that the total cost of the *Pathfinder* was \$4,428. The sum of the two mortgages appearing on the registers, as given to the Bechtels, would be \$2,214, or one-half the value of the *Pathfinder*. These peculiar proportions existed in the case of the *Carolina*, although Mr. Munsie there endeavored to establish that he had paid money in addition to the consideration expressed in the bills of sale, in order to avoid the necessary conclusion that Bechtel was an equal owner. But Patrick Hickey, who swore that but \$2,000 was paid for the vessel when Munsie purchased her, contradicted him and proved conclusively that the

mortgage to Bechtel on the *Carolina* was one-half its value.

The details of the cross-examination of Munsie, relative to the transaction with Bechtel concerning the *Pathfinder*, and which are found in his cross-examination, Record, 1563 to 1569, establish the conviction that Bechtel was a half owner of the *Pathfinder*, as he was a half owner of the *Carolina*.

In the Argument on behalf of Great Britain it is admitted that Bechtel was equally interested in the venture of the *Pathfinder* in 1889. The mortgages which are in evidence, executed by Munsie & Carne to Bechtel, have the same peculiar characteristics as the mortgages executed on the *Carolina*. They do not bear interest, the interest clauses being erased.

Exh. 14, U.
S. Cl. 14.
Exhs. 276;
Exh. 15, U.
S. Cl. 14.
Exhs. 277.

Andrew J. Bechtel testified that he was not interested in any ship in the sealing business until about three years before the time he was testifying. This was before Munsie had decided, in order to attempt to save the *Carolina* claim, to acknowledge that Bechtel was interested in the venture of the *Pathfinder* in the year 1889, and to give the history of their dealings in the years 1886, 1887, 1888, and 1889.

The only conclusion which can be drawn from the testimony and from the exhibits found in the Record in connection with these two claims is that Andrew J. Bechtel was a half owner of the *Carolina* at the time of her seizure and a half owner of the *Pathfinder* at the time of her seizure.

The impression created by these witnesses at Victoria was that these mortgages, as said by one of the High Commissioners, were "whitewash mortgages" and that impression was never removed and a reading of the Record does not now remove it.

In the schedule appended to the claim of the *Carolina* in the British Argument the claim is made "Net value of approximate catch for 1887 was

85,000
and in
feiture
her ov
claim

The
of the
States

Co.,
ing th
of de

The
the U

the re
conta

direct
the d
Recon

On
ister
as fol

DE.
letter
and f
single
releas
last s

On
sion
releas

Ha
vesse
Gove
mean

Th
sion i
once

85,000." No evidence is cited to support this claim, and inasmuch as a decree of condemnation and forfeiture was entered and the vessel never returned to her owners, and therefore a total loss, no basis for this claim exists.

The claim was made at the hearing that by reason of the letter of November 1, 1888, from the United States marshal for the District of Alaska to "Munsie & Co.," informing them an order had been entered releasing the *Carolena* to her owner, the case became one of detention and partial loss, rather than total loss.

The reply of Sir L. S. Sackville-West to Mr. Bayard, the United States Secretary of State, acknowledging the receipt of a note dated the 3d of February, 1887, contained the information that orders had been issued directing the discontinuance of all proceedings and the discharge of the vessels seized in 1886 is in the Record. This letter bears date February 4, 1887.

On the 26th day of July, 1887, the deputy minister of fisheries for the Dominion of Canada wrote as follows to *Munsie & Co.*:

DEAR SIRS: I have to acknowledge the receipt of your letter of the 19th instant addressed to the minister of marine and fisheries, in which you state "we have not received a single word from the United States Government about the release of the vessels," referring, of course, to those seized last season.

On the 2d of April last I communicated to you the decision of the President of the United States, in so far as releasing the vessels, etc., which letter you acknowledged.

Have you made any application for the surrender of the vessels, or have you reason to suppose the United States Government would communicate the action to you by other means than the ordinary official channel?

This department lost no time in communicating the decision in question to you, with the expectation that you would at once take steps to regain possession of the vessels.

I am, etc.,

JOHN TILTON,
Deputy Minister of Fisheries.

This letter discloses that as early as April 2, 1887, Mr. Munsie was advised that he could obtain his vessel by going to Unalaska. He took no steps toward retaking possession of the vessel, and treated her as a total loss. If at this time, Munsie had taken steps to reclaim his property there might be some basis for a claim of detention; but solely because at a much later time, and after the vessels had become worthless, the United States formally offered to return the property for diplomatic reasons, the fact that the owner himself had abandoned the vessel and treated her as a total loss is not removed.

The vessel was tendered to the owner in April, 1887, and the tender refused. The subsequent tender on the part of the United States has no bearing upon the nature of the claim, because prior thereto the vessel had been considered and treated as a total loss by her owners.

The
tons, v
In Fe
Bosco
tion of
ested
On
couve
July 2
ing on
seized
at 6 o
on bo
to Un
tled
by th
Alask
tembe
On C
and s
was c
by th
decre
appe
Th
ings
In
time
forfe

THE THORNTON.

CLAIM No. 2.

The *Thornton* was a schooner of 22.30 registered tons, with auxiliary steam power of small capacity. In February, 1886, she was chartered by Joseph Boscowitz, and employed in sealing under the direction of James D. Warren, they being equally interested in the profits of her voyage.

On May 31 the vessel left the west coast of Vancouver Island for Bering Sea, which she entered July 2 in tow of the *Dolphin*. She commenced sealing on the 5th and continued operations until she was seized by the United States revenue steamer *Corwin*, at 6 o'clock p. m., August 1, at which time she had on board 403 seal skins. On August 2 she was towed to Unalaska, where she was subsequently dismantled and beached. On August 28 she was libeled by the United States attorney in the district court of Alaska, and a demurrer and answer were filed September 20 on behalf of James D. Warren as owner. On October 4 a decree of condemnation, forfeiture, and sale of the vessel, her tackle, apparel, and cargo was entered. A motion was made on the same day by the proctors for the claimant asking to have the decree set aside, which being overruled, a notice of appeal was filed on behalf of the claimant.

The appeal was never perfected and no proceedings were taken to arrest the sale of the property.

In the autumn of 1886, and presumably a short time after Warren received notice of the decree of forfeiture, he purchased the schooner *Mary Taylor* to

R., 937, line 10; 1613, line 10.

R., 1087, line 12.

R., 1978, line 19.

App. B, p. 92, line 32.

App. B, p. 95, line 32.

R., 1965, line 54.

App. B, p. 98, line 13.

App. B, p. 98, line 25.

App. B, p. 87, line 52.

App. B, p. 89, line 12.

App. B, p. 90, line 1.

App. B, p. 90, line 41.

take the place of the vessel seized. His testimony upon the subject is:

R., 1156, line 62. Q. After the seizure of the *Thornton* did you provide a vessel to take her place in the fleet?

A. Yes.

Q. What was the one?

A. The *Mary Taylor*.

R., 1158, line 14. Q. When did you buy the *Mary Taylor*?

A. In the fall of 1886.

R., 1181, line 26. Q. What did you use the *Mary Taylor* for after you bought her?

A. Sealing.

Q. Where?

A. On the coast and in Bering Sea.

Q. For what sealing season?

A. 1887.

The purchase of this vessel for the sole object of replacing the *Thornton*, her employment for the same purposes as the seized schooner, the abandonment of the appeal to the United States Supreme Court, and the entry of February 28, 1887, in Warren's journal that the vessels were to be sold, establish conclusively that the schooner became a total loss to her owner and was so treated by him.

At the time that the vessel was anchored in the harbor of Unalaska, an inventory was made by an officer of the *Corwin*, which was offered in evidence by Great Britain, and is a part of Exhibit No. 45 (G. B.), claim No. 2. There also appears in the same Exhibit a list of the arms and ammunition found on board the schooner at the time of seizure. The articles contained in the inventory and in the list were delivered to the United States marshal at Sitka, and were the only property seized.

Br. Arg., 102. In the schedule which appears in the opposing Argument setting forth in detail the damages claimed for the *Thornton*, there is included an item for "Premium of insurance paid, \$410." Four policies of insurance upon the schooner *Thornton* and her cargo were offered in evidence by the claimant. Of these, one upon

App. B, 86-87.
Ap. B, p. 85, line 15.

R., 1089, line 60.
R., 1091, line 3.

the cargo expired on July 3, 1886. Two others, one ^{R., 1090, line 32; line 50.} upon the hull and another upon the cargo, are indorsed, "Canceled this policy on and from the 2nd August, risk having ceased through vessel having been seized by the United States Government and returned three periods of 11s. 10d. [and 13s. 4d.] a period." The ^{R., 1090, line 7.} one remaining policy was for £600, at the rate of 8 guineas per cent.

The risk was declared to commence on the 11th March, 1886, and to end on the 3rd March, 1887, both days inclusive. The owner of the vessel had therefore received the benefit of this policy up to the time of seizure, and at such time, the liability of the underwriters having ceased through the act of seizure, it was the duty of the owner to have secured the rebate for the canceled policy, which he undoubtedly did. In relation to the policies which were canceled through the risk having ceased on the 2nd August, and the policy which expired on the 3rd July, the owner had received the full benefit of his expenditure. It is therefore claimed by the United States that no award should be made the claimant under this item.

The claim for "value of articles in inventory not properly belonging to the ship, on board at the time of seizure," is based according to the marginal reference in the British Argument, upon a schedule prepared from inventories appearing in the log of the schooner. As the value set opposite these articles is given by James D. Warren, who was not shown to have had knowledge of their condition at the time of seizure, it is to be presumed that they are based upon what such articles would have cost when new. These valuations can only be applied by allowing a reasonable deduction for the condition of the articles as shown by the inventory taken by Lieutenant Cantwell. The total of the valuations given for these articles by Captain Warren is \$330.44. ^{R., 967, line 33.}

The same statement may be made in regard to the ^{R., 967, line 40.}

valuation of the arms seized as given in the Argument on behalf of Great Britain, it appearing by an examination of the marginal references to the Record that the *original cost* is the basis of the claim, without any deduction having been made for the depreciation of such firearms, which is excessive in Bering Sea because of the prevalence of fogs and rains in that region.

The Record discloses, in relation to the item entitled "Slop chest, *say* \$125," the following in the examination of J. D. Warren:

R., 911, line
59.

Q. There is a claim in that schedule, marked No. 17, for identification, for dry goods, does that refer to the slop chest?

A. That would be the slop chest.

Q. About how much was on the *Thornton*?

A. I suppose about \$250—\$200 or \$250.

Q. This is \$49; would there be an error in that statement?

A. *The men may have got their supplies before they left in that case.*

Q. At any rate you remember there was a slop chest?

A. Yes; they had a slop chest on board.

Q. And you usually carry \$250 worth of stuff?

A. Usually carry about that.

The United States claim that there is no evidence as to this item.

In regard to "estimated value of articles which were doubtless on board, which can not now be specifically mentioned," and "bedding," there is no evidence before the Commissioners.

"Expenses and hardships of crew, thirteen men, at \$500 each," which appears as one of the items in the schedule referred to, are personal claims, which, not having been presented to the Tribunal of Arbitration at Paris, and not having been included in the "additional claims" set out in the preamble of, and appendix to, the Convention of February 8, 1896, can not be allowed by this High Commission, even if there was sufficient evidence to establish such claims, which the United States insist there is not.

In reference to the item for legal expenses at Sitka, the Record discloses:

Q. You charge \$500 expenses at Sitka in connection with the seizure of the *Thornton*. What does that mean? R., 917, line 13.

A. Legal expenses.

Q. Legal expenses at Sitka in connection with the seizure?

A. Well, the captain employed a lawyer up there, or a firm, and it appears that they had arranged to appeal these cases, and he drew on me for \$500.

Q. That is the reason that you charge that. As a matter of fact, you have not paid it?

A. I did not pay it. *He has been paid some money that we thought was right.* I told him I had put the claim in, and if it was allowed he would get it.

Q. Who was that?

A. Clark. I forget the name.

The case of the *Thornton* was not appealed, and the amount of the retainer demanded by Clark was excessive, the services consisting in filing a demurrer and answer to the libel. For these services he appears to have been paid a reasonable sum, but the actual amount is not in evidence. The United States therefore claim that the owner did not become obligated to pay any further sum, and as the amount paid is not established it can not be allowed. App. B, p. 88.

The item "for traveling, hotel, and other necessary expenses," in connection with the said seizure, a claim of \$1,000 is stated by Captain Warren to have been "just a bulk sum." He stated that in connection with this he made two trips to Ottawa, one to Sitka, and that one of his trips to Ottawa was extended to Washington in 1890. The Record further discloses: R., 917, line 32.

Q. And you charged for traveling expenses \$1,000 in each case? R., 917, line 62.

A. I do not remember what it is in the other cases.

Q. But you went on business of all the seizures of 1887 together with that of the *Thornton* in 1886?

A. Yes.

Q. You charge \$1,000 in the *Thornton* case. You do not mean to say, do you, Captain Warren, that you expended \$1,000 in traveling for the *Thornton* in 1886?

A. No; I have not stated that I spent a \$1,000, a considerable time.

Q. You undertook all your claims together when you went to Ottawa?

A. When I went to Ottawa; yes.

R., 317, line
11.

Warren at the time was the representative of the other claimants against the United States. The evidence does not establish that in the case of this vessel the sum stated was expended, and from a comparison of the amounts charged the other claimants as their pro rata share, which was about \$150, the claim here made is not only excessive and exorbitant, but can not be legally recovered against the United States, as any such expense was incurred in the preparation of the claim for presentation to the government at Ottawa.

The item "Fee to counsel, and for other legal expenses in connection with the preparation of the claim," is founded upon no evidence of the liability of the claimant to pay such sum, or of the services which were performed for which the charge is made. It is therefore claimed that there is no basis on which an award can be made for this item.

The charges in the schedule of \$6,958 for "balance of catch," \$900 for coasting purposes for three months, and of \$5,000 for "estimated coast and Bering Sea catches for the year 1887 (net value of)" are for prospective profits, and can not be allowed in any event, the vessel having become totally lost to her owner.

Ante, p. 305.
Ante, p. 319.

The claims for the "value of the vessel, \$7,000, expenses and hardships of crew, 13 men at \$500 each, \$6,500," and the personal claims of Guttormsen and Harry Norman, have been considered elsewhere.

The damages sustained by the claimant by reason of the seizure of the *Thornton* were the value of the vessel in the condition she was when seized, on the

market
one-half
of the
when t
half of
market
in the
cargo a

market at Victoria at that time, the market value of one-half of the articles not properly included as a part of the vessel itself in the condition and at the time when they were taken from the schooner, and one-half of 403 seal skins at the price ruling in the market at Victoria at the time when the vessel would in the natural course of events have discharged her cargo at that port in 1886.

THE ONWARD.

CLAIM No. 3.

App. B, 104. The *Onward* was a schooner of 35.20 registered tons. Charles Spring, a subject of Great Britain, and App. B, 76, Alexander McLean, a citizen of the United States, line 20. were partners under the firm name of C. Spring & Co., and equal owners of the vessel at the time of her seizure.

In 1886, after a sealing trip in the spring, she trans- R., 863, line 5. shipped her skins on the west coast and sailed for Bering Sea, carrying 9 canoes. She commenced App. B, 50, sealing in Bering Sea on July 12, continuing until line 59. August 2, at which time she had taken 907 skins, 507 R., 877, line of which had been transferred to the *Favourite*. On 38. August 2, between 4 and 6 o'clock in the morning, R., 64, line 10. the *Onward* was seized by the United States revenue steamer *Corwin*. She was towed to Unalaska, where App. B, 64, her canoes and seal skins were removed and turned line 10. over to the United States marshal at Sitka. App. B, 65, line 20.

App. B, p. 58, On August 28 the *Onward*, her tackle, boats, and line 40. cargo were libeled by the United States attorney for the district of Alaska, and on September 20 a libel App. B, p. 68, and answer were filed on behalf of Charles Spring line 30; p. & Co., claimants of the property. On October 4 a 71, line 24. decree of condemnation, forfeiture, and sale was entered against the schooner, her outfit, canoes, and cargo. A motion on the same day was made on behalf of the claimants to set aside the decree. App. B, p. 74, Notice of appeal was filed on the same day on behalf line 40. of the claimants. The appeal was never perfected, and no further proceedings were had on the part of claimants to recover possession of the schooner.

On the 30th day of December, 1886, Charles Spring R., 891, line 27, and Alexander McLean entered into an agreement App. B, p. 52, line 25, dissolving their partnership. In the early part of 1886, C. Spring & Co. owned three vessels, the *Favourite*, the *Kate*, and the *Onward*. In the agreement for dissolution valuations were placed upon the *Favourite* and *Kate*, but *no valuation was placed upon the Onward*.

As McLean did not desire to continue longer in the R., 892, line 48, business, Spring purchased his share of the part- R., 592, line 39, nership property for about \$1,100, but the *Onward* was not included in the transfer, which would have been done had the owners anticipated her recovery. A half interest in the claim against the United States for the seizure of the *Onward* was retained under the agreement by each partner. This evidence is conclusive of the fact that the *Onward* was a total loss to her owners, and was so considered by them. R., 891, line 32.

While the schooner was in the harbor of Unalaska an inventory was made by an officer of the *Corwin*, giving a detailed statement of the property seized and its condition. This inventory was offered in evidence on behalf of the claimant, and appears as Exhibit App. B, p. 50, line 35, No. 32 (G. B.), Claim No. 3.

There also appears in the testimony taken during the proceedings at Sitka a statement of the arms and ammunition delivered by the *Corwin* to the United States marshal at Sitka. App. B, 65, line 20.

The articles contained in the inventory and in the last statement referred to are the only property for which the United States is liable in any event. The articles covered in the item "unconsumable sealing outfit" are included in the inventory.

Under the schedule, which appears in the Argument on behalf of the claimants, setting forth in detail the damages claimed for the *Onward*, there is included an item "Premium of insurance paid, \$240." The R., 869, line 68, marginal reference given is to a statement of Charles

Spring, in which it appears that he paid originally for insurance on the vessel \$260, receiving a rebate of \$20. He does not show when this insurance was effected, nor at what time the policy was canceled. It is claimed on the part of the United States that, as the owners had received the benefit of the insurance to the time of seizure, and presumably the full rebate from that time to the expiration of the policy, they sustained no damage.

R., 863, line 44. The charge for "Nine canoes at \$28, \$252," is obtained from the evidence of Spring, in which he says that the canoes with their outfit were worth, he "would say, \$25 each—\$25 or \$28—anywhere in that neighborhood."

R., 863, line 22. He also stated that he had a lien on the canoes for advances made, and that they were partly owned by him and *partly by the Indians*.

In his cross-examination he testified:

R., 874, line 59. Q. The advance that you made to the Indians, however, is a part of the money which you charged as paid to them, is it not?

A. In some cases.

Q. So if you recover for the value of the canoes, so far as your lien is concerned, and the money which you claimed to pay the Indians you would be recovering the same money twice in some instances?

A. In some instances; but in such a case as that the Indians would be charged.

Q. What do you mean by that?

A. When I say the Indians, I mean the Indian hunters would be charged, that would be deducted, and in other cases it was a direct purchase from the Indian that owned the canoe in order to make the complement to send out.

Q. That was in the case where you directly purchased the canoe?

A. Yes.

Q. How many canoes did you directly purchase?

A. I should think some three or four.

The United States insist that in view of this testimony of Spring, one of the owners, this claim should be confined to the three canoes actually purchased, and that their value should be fixed at the

originally for
ing a rebate of
insurance was
was canceled.
States that,
of the insur-
ably the full
of the policy,

\$28, \$252," is
in which he
were worth, he
anywhere in

the canoes for
tly owned by

Indians, however,
s paid to them,

canoes, so far as
you claimed to
the same money

se as that the

Indian hunters
, and in other
than that owned
o send out.
y purchased the

use?

w of this tes-
s, this claim
actually pur-
fixed at the

lower figure given by the witness. The money paid the Indians is included in the value of the seal skins.

An item appears in the schedule, "Twelve guns, at \$25. \$300." The testimony of Spring in relation to this charge shows that they were breech-loading and muzzle-loading shotguns. He also says of them that "they were an old, low-grade." gun; and that a portion of them were owned by the hunters, about six or seven belonging to the owners of the vessel.

The United States claim that the guns which were actually the property of the owners of the schooner are the only ones which can be considered.

The item "Cost of defense at Sitka, \$500," is based on the following testimony of Spring:

Q. Now, were you put to any legal expense at Sitka, or was there a charge made against you? R., 870, line 56.

A. There was a charge.

Q. What was the amount of the charge?

A. \$500.

Q. Did your captain draw on you for it?

A. No; he did not.

Q. Did you actually pay it?

A. It is not actually paid, but it will have to be.

Q. Were you sued for it, and judgment obtained against you?

A. Yes.

Q. Do you know how you were summoned to appear?

A. *I think it must have been sent down to me; I really do not remember, now.*

A transcript of the judgment here referred to is not produced, and no judgment could have been recovered under the laws of the United States by any such service as is suggested, and there is no evidence to show that there was any employment of an attorney by the owners through which they became liable to pay the amount charged. The legal services which appear by the Record to have been performed on behalf of the owners at Sitka consist of the filing of a demurrer, an answer to the libel, a motion to set aside the decree, and a notice of appeal. App. B, 68.

25
22
20
18

10
01

R., 74, line 50. The item "Money given to the Indians, \$15," is presumably based upon a statement of John Marketich, the mate, that he gave to the Indians "something between ten and fifteen dollars."

The United States deny any liability for this money loaned.

The charge for \$152 paid in connection with presentation of claim at Ottawa, was incurred in making the claim against the United States, and can not be allowed.

The item "Belyea's charges, \$1,000," should not be treated as damages sustained by the claimant, for the reason that it is exorbitant and that there is no legal obligation shown by the Record on the part of the owners to pay the amount.

R., 870, line 50. The item "Personal expenses, \$300," is so grossly excessive that it demands particular attention. There is no evidence that Charles Spring left Victoria at any time on account of these claims, his expenses in connection with them being postage in corresponding "with different people in connection with the matter, both at Ottawa and Sitka—different officials up there."

R., 870, line 48. He also states that he had "been to a great deal of trouble." Such a claim should not be considered.

The items "Estimated value of provisions, ammunition," etc., and "Estimated value of articles which were doubtless on board the vessel, but which can not be specifically mentioned," are based upon no evidence whatsoever.

The items "Value of vessel," "Expenses and hardship of crew," and the personal claims of Monroe, master, and Marketich, mate, are fully discussed at another place in this Argument.

Ante, p. 308.
Ante, p. 319.

The items "For balance of catch for the remainder of the season 1886" and "Net value of estimated coast and Bering Sea catches for the year 1887" are for prospective profits, and can not be allowed in any event, as the vessel became a total loss to her owners.

Indians, \$15," is
f John Marke-
Indians "some-

for this money

on with presen-
in making the
can not be al-

00," should not
the claimant, for
that there is no
on the part of

" is so grossly
ention. There
left Victoria at
his expenses in
corresponding
with the matter,
cials up there."
a great deal of
considered.

visions, ammu-
articles which
but which can
based upon no

enses and hard-
ns of Monroe,
y discussed at

the remainder
e of estimated
year 1887" are
allowed in any
to her owners.

THE FAVOURITE.

CLAIM No. 4.

The *Favourite* was warned to leave Bering Sea by the United States revenue cutter *Richard Rush*, at about 2 o'clock in the morning on the 2d day of August, 1886. The vessel did not obey the warning, but continued her sealing voyage until the 19th day of August, when the captain says he had completed his hunting. R., 1329, line 44.

Charles Spring, a subject of Great Britain, and Capt. Alexander McLean, a citizen of the United States of America, were equal owners of the *Favourite* at the time of the seizure in 1886. The profits of the voyage were to be equally divided. The partnership between Spring and McLean was dissolved in December, 1886, and at that time the two partners took an equal interest in the claim against the Government of the United States. R., 1303, line 11, line 13.

The Government of the United States claims that the owners of this vessel failed to establish that they had suffered any damage whatever by reason of the warning given by the cutter.

Captain McLean, who was sailing the *Favourite* at the time of the warning, testified that he did not consider that the claim was a legal one, and that he made no claim for damages. The other owner was not aboard the vessel, and no other person gave any testimony of importance regarding the claim. R., 1335, line 63.

The vessel continued her voyage uninterrupted throughout the entire sealing season, when, having taken 2,259 seal skins, 675 being taken after the R., 416, line 1.
R., 1330, line 60.

warning, she sailed for Victoria, landed her catch, and enjoyed the benefits thereof.

The understanding between Charles Spring and Captain McLean, before the *Favourite* sailed for Bering Sea, was that the question of the duration of the voyage should be left entirely to the discretion of the captain. Spring says:

R., 1302, line 50. Q. Did you give any instructions when the vessel was leaving as to when she should leave the Bering Sea?

A. Not particularly in the case of the *Favourite*. Knowing that Alexander McLean was captain and an interested party, I took it for granted that he would use his own judgment anyway to the best advantage.

Q. To what effect was the understanding?

A. That he was to stay as long as possible.

R., 1304, line 1. Q. You yourself had never been in Bering Sea?

A. No; not at that time.

Q. And you practically knew nothing of the close of the season in Bering Sea?

A. No.

Q. And Capt. Alexander McLean had had former experience?

A. Yes.

Q. And you left the matter to him entirely?

A. Yes.

R., 1329, line 37. Captain McLean was called as a witness on behalf of the United States, and testified that he was half owner of the *Favourite*; that he kept a log of the voyage of the *Favourite*, which he produced for inspection.

R., 1329, line 50. Examined as to the number of seal skins taken after the warning was given by the cutter, McLean said:

R., 1330, line 60. Q. You took about 675 skins after you were warned?

A. Yes, sir.

Q. And turned them over to Mr. Spring or your partners here?

A. Yes, sir; and brought them to Victoria and sold them.

Cross-examined with reference to the voyage of the *Favourite*, this witness testified:

R., 1331, line 48. Q. Why did you leave the sea on 19th August (1886)?

A. The season was pretty well closed.

R., 1333, line 44. Q. When you left for the Bering Sea in 1886, as master of the *Favourite*, when did you intend to come back?

A. I intended to be back here (Victoria) between the 1st and 10th of September.

Q. Had you any special reason to come back at that time?

A. Well, I used to fit out for that time.

Deducting the time consumed in making the return voyage from Bering Sea to Victoria, the *Favourite*, had she arrived in Victoria on the 1st of September, would have left Bering Sea about the 16th of August. As a matter of fact, she continued her voyage until the 19th.

In the Argument on behalf of Great Britain the testimony of McLean, where he says that he could have remained until the 1st of September "if the weather would permit," is cited. His testimony as to what he could have done, as against his testimony as to what he did do under the actual conditions, has no weight.

Captain McLean was examined regarding the time R., 402, line 55. that he considered the sealing season in Bering Sea closed:

Q. What time did you leave the Bering Sea in the *Mary Ellen*?

A. I can not exactly say, but probably about the 20th or 25th of August. I am not sure.

Q. From your experience what would you call the end of the sealing season in Bering Sea in the years 1886 and 1887?

A. About the 20th of August I would consider the end of the season. I used to leave the sea then.

Q. How many years did you leave the Bering Sea about R., 403, line 54. the 19th or 20th of August?

A. In 1883 the last lowering we had in the Bering Sea was on the 10th of August. In 1885 on the 23d of August. In 1886 on the 19th of August. In 1887 on the 19th of August. In 1888 on the 19th of August, and in 1889 on the 25th of August.

In the Argument filed on behalf of Great Britain it is claimed the *Favourite* materially changed her location, and left what is termed "the best sealing grounds."

The voyage of the *Mary Ellen* for the year 1886 Argument on behalf of Great Britain, p. 60, line 20. is cited in the Argument as showing exactly the location of the "best sealing grounds" in the Bering Sea.

Referring to page 268 of the record, line 55, where the witness William T. Bragg was examined relative to the grounds over which the *Mary Ellen* carried on her sealing operations in the year 1886, this testimony is found:

Q. Give it to us generally (the location).

A. Between $54^{\circ} 30'$ and 55° north latitude, and 168° to $169^{\circ} 30'$ west longitude. I was always under the impression that that was the latitude and longitude we were hunting in.

Captain McLean did not testify that he changed his sealing grounds on account of the seizure, and referring to the positions, as found in the log, produced by that witness, it will be found that the *Favourite* hunted over this "best sealing ground" after the date of the warning given by the United States cutter. Her

Log of the
Favourite
year 1886,
Ex. 8, U. S.
claim No. 4.

positions were August 2, $54^{\circ} 50'$, $168^{\circ} 49'$; August 3, $54^{\circ} 40'$, $168^{\circ} 50'$; August 4, $54^{\circ} 39'$, $169^{\circ} 23'$; August 5, $54^{\circ} 35'$, $168^{\circ} 40'$; August 6, $54^{\circ} 50'$, $170^{\circ} 07'$; August 7, $55^{\circ} 06'$, $170^{\circ} 40'$; August 8, $54^{\circ} 51'$, $170^{\circ} 49'$; August 9, $54^{\circ} 46'$, $171^{\circ} 01'$; August 10, $55^{\circ} 03'$, $170^{\circ} 40'$; 11th and 12th, position not given; August 13, $54^{\circ} 45'$, $168^{\circ} 17'$; August 14, $55^{\circ} 24'$, $168^{\circ} 35'$; August 15, $55^{\circ} 30'$, $169^{\circ} 10'$; August 16, $56^{\circ} 15'$, $166^{\circ} 45' 30''$; August 17, $55^{\circ} 40'$, $165^{\circ} 30'$; August 18, $55^{\circ} 12'$, $165^{\circ} 40'$.

The position occupied by the ship after the 2d day of August is at no time beyond 171° west, and always between $54^{\circ} 35'$ and $56^{\circ} 15'$, which is exactly, according to the charts cited in the Argument on behalf of Great Britain and according to the Argument itself, "the best sealing grounds" in Bering Sea. The position occupied on the 16th, 17th, and 18th of August is directly between Unimak Pass and the Pribilof Islands, the waters between which are the "great highway of the seals," according to the claimants.

The claim is made that the *Favourite* did not change her ground until the 4th of August, evidently to ex-

plain
August
Th
most
2d au
the 1
was l
to the
Th
canoe
this
Exhi
kept
numb
does
ing d
testif
from
which
That
of 18
again
state
Unit
were
In
to wi
U. S.
tion
char
Doc.
gress
whic
Tow
Favo
* In
is prin
August
each

line 55, where
examined relative
Ellen carried on
1886, this testi-

ude, and 168° to
er the impression
were hunting in.

he changed his
e, and referring
oduced by that
avourite hunted
he date of the
cutter. Her
49'; August 3,
39', 169° 23';
3, 54° 50', 170°
August 8, 54° 51';
'; August 10,
tion not given;
t 14, 55° 24';
'; August 16,
40', 165° 30';

fter the 2d day
west, and al-
which is exactly,
gument on be-
the Argument
ring Sea. The
nd 18th of Au-
s and the Pri-
a are the "great
e claimants.

did not change
vidently to ex-

plain away the catches made on the 2d and 3d of August, amounting to 260 skins.

The *Favourite* occupied on the 5th of August almost exactly the same position she occupied on the 2d and 3d, and occupied the same position again on the 13th and 14th, and on the 16th, 17th, and 18th was hunting in the most favorable location, according to the claimants, in the entire Bering Sea.

The claim is also made that she only lowered her canoes on the 2d, 3d, 10th, and 19th. The basis of this statement is obtained from page 5, known as Exhibit No. 9, United States claim No. 4, of the book kept by Capt. Alexander McLean, in which the total number of seals taken was recorded. That book does not purport to contain a statement of the lowering days. On the contrary, Captain McLean directly testified that the figures in this book were compiled from a little book kept on board the vessel, and which contained an account with each Indian hunter. R., 1332, line 3. That book was left on board the *Favourite* in the fall of 1886, and he had not seen it since. He testified again that there was one day's catch left out in the statement compiled on this page, marked Exhibit 9, United States claim No. 4, upon which day there R., 1330, line 55. were some 110 skins taken.

In the Argument for Great Britain a map is referred to which was prepared by C. H. Townsend, assistant, U. S. Fish Commissioner as tending to show the location of the "sealing grounds." The original of this chart is found in part 2 of the report known as Senate Doc. 137 of the first session of the Fifty-fourth Congress, and upon referring to page 53 of the book in which the map appears, it will be found that Mr. Townsend had before him a copy of the log of the *Favourite* for this voyage of 1886.* The chart itself

* In the document referred to the location of the *Favourite*, August 1, is printed under date July 31, and the location August 2, under date of August 1, and this mistake is made with reference to the station for each day.

Argument on
behalf of
Great Brit-
ain, page
59, line 17.

shows where the *Favourite*, between the 2d and 19th days of August, sealed. If the map of Mr. Townsend, based upon the log of the *Favourite* for this voyage of 1886, is to be used as authority upon the location of "the best sealing grounds," the claim that the *Favourite* in the year 1886 was not on the sealing grounds would, apparently, not be substantiated by the documents used on behalf of Great Britain to demonstrate the location of "the best sealing grounds."

Captain McLean who, it will be remembered, was half owner of the vessel at the time of the voyage and possesses an equal interest in the result of this claim before this High Commission with Charles Spring, was asked on cross-examination:

R., 1335, line
52.

Q. Did you or did you not consider that you had a claim against the United States Government for having been warned out of Bering Sea?

A. I can not say that I did.

Q. I ask whether you consider you had a claim?

A. I considered that I had for the *Onward*. The *Onward's* claim was good, but the *Favourite's* I was always in doubt of.

Q. And you attached no importance to the matter at all?

A. No, sir; I never made any claim.

R., 1336, line
45.

Q. You are sure you did not furnish Mr. Spring the particulars for the presentation of the claim?

A. Not to my knowledge. I never was consulted in the matter when he made the claim.

The Government of the United States claims that the *Favourite* continued her hunting voyage to the time that the captain considered the termination of the sealing season, giving no heed to the warning of the United States revenue cutter, and that the testimony of the claimants establish the fact that no damage was suffered by reason of the act of the officer of the cutter.

THE BLACK DIAMOND.

CLAIM No. 5.

This claim was not presented to the Tribunal of Arbitration at Paris, and is not included in the Convention of February 8, 1896, either in the schedule attached thereto or in paragraph 5 of the preamble as an additional claim.

A motion was made on behalf of the United States ^{Pleadings,} that the High Commissioners "dismiss from con- ^{claim No. 5.} sideration the demand of the Government of Great Britain embraced and described in claim No. 5."

The grounds of the motion are that as to the said claim, in whole or in part:

1. No question of fact involved therein was submitted to the Tribunal of Arbitration constituted under the treaty concluded at Washington on the 29th of February, 1892, between the United States and Great Britain, in accordance with Article VIII of the said Treaty.

2. The said claim No. 5 was not embraced in the schedule of the British case, pages 1 to 60, inclusive, as presented to the said Tribunal of Arbitration.

3. It was not included or referred to in Article IX of the award of the said Tribunal of Arbitration.

4. It was not embraced in the Convention between the United States and Great Britain for the settlement of claims presented by Great Britain against the United States, in virtue of the treaty of February 29, 1892, which Convention was ratified by the President of the United States, April 23, 1896, and by Her Britannic Majesty, May 14, 1896, and under which the High Commissioners were named.

5. And the said claim No. 5, in behalf of Great Britain, claiming compensation from the United States, did not arise by virtue of the treaty aforesaid or of the award and findings of the said Tribunal of Arbitration, and it is not an additional claim specified in the fifth paragraph of the preamble to the said Convention, and is not in the list of claims intended to be referred, appended to said Convention, pointed out as the claims intended to be referred in Article I of said Convention.

The argument and consideration of this motion were postponed until the final argument of all the claims. The testimony was taken *de bene esse*. Counsel representing the Government of the United States and Her Britannic Majesty before this High Commission communicated each with their own Government and received instructions resulting in the following stipulation:

R., 1808.

It is stipulated and agreed by counsel for Her Britannic Majesty and the United States, subject to the sanction of the Commissioners, that the claim numbered 5, resting on the alleged warning of the schooner *Black Diamond* in 1886 and the personal claim of James Gaudin, included in claim No. 11, *may be proceeded with by the Commissioners for the purpose of reporting facts and conclusions to our respective governments, for their information separately from other claims; provided, however, that the question of jurisdiction of the Commissioners under the convention in respect of said claims shall remain undecided; but the Commissioners, in their discretion, may report their opinion on that question—counsel intending to prejudice in no way whatever their respective governments in above matters.*

R. 1808, line
57.

The High Commissioners sanctioned the stipulation and ordered it filed.

The Government of the United States asserts that the consideration of this claim is not within the jurisdiction of the High Commissioners. An inspection of pages 1 to 60, inclusive, of the British case, as presented to the Tribunal of Arbitration at Paris, discloses that no claim for damages by reason of any

warning given to the *Black Diamond* in 1886 was presented to that Tribunal. No reference is made to any such claim in the appendix of claims to the Convention by which this High Commission was created; and this claim is not referred to in paragraph 5 of the preamble of the Convention of February 8, 1896, as an additional claim to be submitted to the consideration of the High Commissioners.

The *Black Diamond* referred to in Annex C, appended to the award of the Tribunal of Arbitration at Paris, as having been seized on the 11th of July, 1889, 35 miles from the nearest land, by the United States revenue cutter *Rush*, was presented to this High Commission as Claim No. 15, and the testimony taken in connection with that claim establishes that the *Black Diamond* was seized the 11th day of July, 1889, by the revenue cutter *Richard Rush*.

The claim of the *Black Diamond* for the year 1886 is of a different nature from the claims submitted by the Convention to this High Commission.

The testimony clearly establishes that no warning of the nature found by the Tribunal of Arbitration convened at Paris, to have been given the vessels named in the schedule appended to the award, was given to the *Black Diamond* in the year 1886, and the United States contend that no warning of any nature, as conclusively appears by the evidence, was given by anyone clothed with the authority of the Government of the United States.

The letter set out in that portion of the Argument filed on behalf of Great Britain, wherein this claim is specifically treated, is not found in the Record, and the conclusion drawn that "similar letters were written to other collectors of customs" is not based upon any testimony or fact found in the Record.

An examination, however, of this communication from the Treasury Department of the United States to the collector of customs at San Francisco discloses

Arg. on behalf of G. B., p. 106, line 13.

that the instructions there given related entirely to vessels contemplating a voyage from the port of San Francisco, and made no reference whatever to warnings being given by the collector addressed in that communication to the ships of any other nation.

The *Black Diamond* entered Bering Sea about the 1st of July, 1886, and proceeded to the port of Unalaska, where the captain says certain papers were served upon him by the collector of customs, and he was advised to leave Bering Sea right away.

R., 1756, line 51. He claimed to have lost the papers, but states: "The R. 1757, line 18. papers represented that if the vessel was caught in Bering Sea killing fur seals she would be confiscated."

Q. Was there any verbal notice?

A. Yes; I was strongly *advised* by the collector of customs at Unalaska to go out of Bering Sea, or I would be sure to be seized.

Q. What did you do then?

A. I went out into the sea and began sealing.

Q. How long did you remain in the sea?

A. I remained until the beginning of August.

Q. What day?

A. I do not remember what day. It was somewhere between the 1st and the 3d and 4th.

R., 1757, line 68. The captain then states that upon the 4th day of August he started on his return voyage to Victoria, abandoning the further prosecution of his hunting trip.

Q. Why did you start for home?

A. I was afraid of seizure.

Q. Had you no other reason to leave the Bering Sea except that of being afraid of being seized?

A. No, sir; I had no other reason.

R., 1774, line 57. The *Black Diamond* left the Bering Sea about the 12th or 14th of August.

R., 1757, line 54. Captain Paxton was questioned relative to the proposed length of his voyage and said:

Q. For what length of time did you outfit?

A. Well, I expected to get back in the beginning of September.

ed entirely to
the port of San
never to warn-
dressed in that
er nation.

Sea about the
e port of Un-
papers were
stoms, and he
away.

t states: "The
was caught in
e confiscated."

ector of customs
ould be sure to

ust.

as somewhere

e 4th day of
e to Victoria,
his hunting

Bering Sea ex-

ea about the

native to the

beginning of

Q. You expected to leave the Bering Sea about the end of August?

A. Yes, sir.

The mate, Owen Thomas, was called as a witness R., 1766, line 20. on behalf of the claimants, giving no evidence of importance relating to the occurrences at Unalaska, and stating, on cross-examination, that the captain would be better informed as to what occurred at Unalaska R., 1774, line 54. than he.

This witness testified relative to the time that the *Black Diamond* left the sea:

Q. Are you positive you went out on one of those days, or R., 1774, line 60. near those days?

A. Somewhere near the 12th of August or the 14th of August.

Q. You could not be mistaken about that?

A. No, sir; it must be somewhere between the 10th and 15th, anyway.

Q. And no matter what the captain says about that, you are positive that that is the time you left?

A. Yes, sir.

The testimony shows that although this so-called warning was given the captain on the 1st day of July, the *Black Diamond* continued on her voyage until the 4th of August, when she commenced to work toward R., 1757, line 61. one of the passes, and finally left the sea between the 10th and 15th of that month, taking in the meantime between 700 and 800 seal skins.

The statement is made in the British Argument:

In the case of the *Black Diamond*, No. 5, and the *Alfred Adams*, the title was in a British subject, but the vessels were operated for the benefit of a trading firm at Victoria, composed of the owner and one Alexander Frank, who was a native-born citizen of the United States. Argument on behalf of G. B., p. 47, line 23.

The Record discloses that Alexander Frank and Jacob Gutman, deceased, were equal partners, which, taken with the admission made on behalf of Great Britain, conclusively proves that Alexander Frank is a half owner of this claim. Exh. No. 10, U. S., claim No. 8, Exh. p. 207.

The stipulation recited agrees that the facts and

conclusions of the Commissioners shall be communicated to their respective Governments. The United States contend that the testimony conclusively establishes that the grounds of the motion filed before this High Commission are sufficient to exclude the claim from the consideration of the Commissioners, and that the facts as found from the testimony are as follows:

That the *Black Diamond* was not "seized or warned in 1886 by a United States revenue cutter," as found with reference to the vessels named in Annex C, appended to the award of the Tribunal of Arbitration convened at Paris;

That no warning was given this vessel by any person acting with authority on behalf of the United States;

That the vessel remained in Bering Sea until the 10th or 15th of August, when she sailed with her cargo of seal skins for Victoria;

That had the vessel not left Bering Sea she would have terminated her voyage between the 20th and 25th of August;

That Alexander Frank, an American citizen residing in the city of San Francisco, in the United States of America, was a half-owner of the venture of the *Black Diamond* in the year 1886, and is a half owner of the alleged claim;

That no instruction or communication was ever sent by the Government of the United States, or any person representing its authority, to the deputy collector of customs at the port of Unalaska, directing him to warn or seize any vessel hunting seals in the waters of the Bering Sea;

That the instructions issued by the United States Treasury Department to the commanders of revenue cutters of the United States, in 1886, were never com-

mun
Diam
Th
whic
\$250
Th
of th
year

communicated to the captain or any officer of the *Black Diamond* in the year 1886;

That there is no testimony in the Record upon which to base the claim "Legal and other expenses, \$250."

That no amount should be awarded the owners of the *Black Diamond* for damages suffered in the year 1886.

THE W. P. SAYWARD.

CLAIM No. 6.

Claims in The *W. P. Sayward* was a schooner of 59.79 tons
British register.
case, Am.
Rep., vol.
4, p. 153.

The vessel being owned at the time of her seizure by Thomas H. Cooper, a civil citizen of the United States, any liability on the part of the United States to this claimant is denied.

In 1887, after sealing along the coast, the vessel, with eight canoes, entered Bering Sea about the 1st of July. On the 9th, about noon, she was seized by the United States revenue steamer *Rush* for violating the municipal statutes of the United States. Under the direction of the United States officer making the seizure, the schooner was sent to Sitka for trial, where she arrived 21st July. On the 13th September, 1887, the vessel, her tackle, apparel, boats, cargo, and furniture were libeled, and on the 19th September a decree of condemnation, forfeiture, and sale was entered against her. Subsequently the schooner, her outfit, and cargo were bonded by Thomas H. Cooper, as owner, and an appeal was taken by him to the Supreme Court of the United States, which appeal was perfected, and the order granting it was entered April 27, 1888. At the time of the granting of this order the vessel was in Seattle, Washington Territory, and in May, 1888 was delivered, with the skins seized on board, to the owner.

In the schedule of this claim, included in the Argument on behalf of Great Britain, appears an item

"485 skins on board at time of seizure, at \$6.50; total, \$3,152.50." These skins referred to are the same as those recovered by the owner under the bond given. Captain Warren, who had the management of these vessels for Cooper, was asked:

Q. Were the seal skins included in the bond you gave for R., 1147, line the *Sayward*? 57.

A. Yes.

Q. How many?

A. About 440.

Q. The bond was given for the vessel and the skins?

A. Yes.

of 59.79 tons

of her seizure
of the United
United States

st, the vessel,
about the 1st
was seized by
h for violating
tates. Under
er making the
or trial, where
eptember, 1887,
argo, and fur-
September a
d sale was en-
schooner, her
as H. Cooper,
him to the Su-
h appeal was
entered April
of this order
Territory, and
skins seized on

On the 19th April, 1888, the following order discharging the schooner, *W. P. Sayward*, from custody was made, directed to the marshal of the District of App. B., 146. Alaska:

SIR: The above-named vessel and all her tackle, apparel, furniture, arms and ammunition, and cargo, consisting of 479 fur seal skins that have been received by you in this port, having been bonded and ordered released by the judge of the above court, you will therefore discharge the vessel, her tackle, apparel, furniture, arms, ammunition, and cargo, consisting of 479 fur seal skins, so received by you, and deliver the same to J. D. Warren.

I hereby certify that the foregoing is a true and correct copy of the order of the court in the case of the United States *v. Schooner W. P. Sayward*, entered in the above entitled cause.

Attest my hand and seal of said district court this 19th day of April, A. D. 1888.

H. E. HAYDON,
District of Alaska.

I hereby certify and return that the schooner *W. P. Sayward* was delivered to J. D. Warren in accordance with this order of the court.

BARTON ATKINS,
United States Marshal.

l in the Argu-
es an item or

In view of the fact that these skins were returned to the owner, the United States consider the claim for their value to have been erroneously included in the Argument on behalf of Great Britain, the evidence

being conclusive, for in no other light are the United States willing to view the claim made. It is needless to add that it could not be allowed in any event.

The item termed in the schedule, "Insurance App. B, 119, \$480.96," is based upon a statement of "premiums line 22. paid per *Sayward, Anna Beck, Dolphin, and Grace*," appearing as Exhibit No. 64 (G. B.), claims No. 6, 7, 9, and 10. This statement shows that in the case of the *W. P. Sayward*, the owner paid for insurance from about January 1, 1887, up to August 15, 1887, £98, 16s. 7d. The vessel was seized on the 9th day of July, and had received the benefit of over four-fifths of the premiums paid, leaving a balance of loss of insurance after seizure until the cancellation of the policies of \$91.50.

The United States claim that the item should be reduced to this sum.

An item is included in the schedule for "mate's trip to Victoria, \$100." In the Argument on behalf of Great Britain the following statement appears in reference to this claim:

Br. Arg., 111, While waiting for trial the mate got leave from the court line 1. to go to Victoria on his parole to return for trial. This trip cost the mate \$100.

The marginal reference given for this statement discloses the following in the examination of A. D. Laing, the mate referred to:

R., 1098. line 4. Q. You say that you came away for good in October. Did you go away before that?

A. I did; I came away in August.

Q. How long did you stay away then?

A. I arrived here on Saturday, and I was on my way back on Monday.

Q. Why did you go back?

A. To stand trial.

Q. Why did you come away?

A. I went to Judge Dawson and asked him for permission to go home and see my people, but he said there was no trouble as long as I gave my word of honor to go back and stand

trial, and I did, and went back and stood trial when it come on.

It is apparent from the testimony that neither this man nor the owner could recover for the expense of a visit to his family at Victoria.

The item in the schedule entitled "Belyea's charges" is unwarranted, as there is no evidence before the Commission that such an amount has ever been paid by the owner of the vessel to Belyea, or that he has become liable for such an amount, or that the services rendered were of such a nature as to warrant such a charge; and, furthermore, whatever services were performed were in connection with the preparation of this claim for presentation to the Ottawa Government.

The item for "owner's expenses, \$200," has no foundation in law or in fact upon which an award could be made. R., 1143, line 44.

An item appears in the Argument on behalf of Great Britain entitled, "Expenses incurred in bonding *Sayward*, etc., *say*, \$1,000," and an examination of the Record, and especially of the pages cited in the British Argument in connection with this claim, fails to disclose any evidence whatever as to the expenses which were incurred by Thomas H. Cooper, the owner, or of his attorney or agent in procuring bonds, and under any circumstances the owner having bonded the vessel for the purpose of taking an appeal to the Supreme Court of the United States there is no rule of law or equity which entitles him to recover any expense incurred in connection with perfecting such appeal. It is also apparent that this expense, if any, was dependent chiefly upon the financial standing of the owner. The United States claim that this item could not be allowed in any event.

The sum of "*say*, \$2,000," is claimed in the opposing Argument for damages to the *Sayward*. Upon

this subject the examination of Captain Warren discloses:

R., 1147, line 42.

Q. What condition was she [W. P. Sayward] in?

A. Well, the vessel herself was not in bad condition; a lot of the gear and stuff on her was missing, such as the kedge anchor and some small sails. I suppose they had been stolen, but I do not know.

Q. What was the effect, if any, upon the vessel between the time she was seized, and the time you got her back?

A. There was not more than there would naturally be for that time, lying without any care.

Q. Only the effect of the lying-up of the ship and the absence of care?

A. Yes.

Q. Were repairs put on her after she got back?

A. I do not just remember whether I repaired her or not. I know that I bought some gear and stuff for her.

In the deposition of Andrew D. Laing, mate of the vessel, the following testimony was given:

R., 1104, line 63.

Q. When did you get the vessel back from Sitka?

A. She came back here, I think, in May, 1888. I was not here in 1888. I was up in Bering Sea in the schooner *Favourite*.

Q. When did you next see her?

A. In the fall of 1888, when I arrived home.

Q. Had anything been done on the hull after she arrived here?

A. Not to my knowledge; they might have caulked her decks and given her a coat of paint.

No other evidence is produced than the statements of these two witnesses to establish the damages which the *Sayward* sustained through detention, nor is there evidence to show that any sum was expended upon the vessel over and above the amount usually paid for wear and tear. The United States therefore claim that the charge of \$2,000 is not only excessive, but that there was no unusual expenditure and no sum could be allowed under this item in any event.

As to the items entitled, respectively, "flag, \$12," "bedding, \$40," and "articles on board ship, items impossible to enumerate (not returned), \$200," there

is no evidence of any kind before the Commission upon which an award could be made.

The claim made for \$900 "loss to owner by reason of detention in 1887 and 1888, when, if in the owner's possession, she would have been coasting November, December, and January," is unwarranted. There is no evidence before the Commission that this vessel had ever been engaged in the coasting trade other than was usual in connection with a sealing trip on the coast in the spring months. The marginal references which appear in connection with this claim do not bear out the statement made in the Argument on behalf of Great Britain. This schooner was not fitted with steam, and of the so-called "Cooper vessels" only those which had steam power appear by the Record to have been used for coasting purposes.

Br. Arg., 111,
line 16.

The claims made for "balance of catch for the remainder of the season" and "estimated coast catch for 1888, less expenses," \$18,986.50 and \$2,413, respectively, being for prospective profits, can not be allowed, and have received a full discussion at another place in this Argument. *Ante*, 101.

The individual claims of Captain Ferey and A. D. Laing are considered in this argument under the title of "Personal Claims of Captains and Mates." *Ante*, 319.

The only damage, which the owner of the *W. P. Sayward* sustained, by reason of her seizure, was through her detention from the date of such seizure to the time when she was surrendered to the agent of her owner; the measure of damages being the demurrage or charter value of the vessel at the port of Victoria for that period.

THE ANNA BECK.

CLAIM No. 7.

App. B, p. 112. The *Anna Beck* was a schooner of 36.35 registered tons. The vessel being owned, at the time of her seizure, by Thomas H. Cooper, a civil citizen of the United States, any liability on the part of the United States to this claimant is denied.

R., 1040, line 30; R., 1040, line 60; R., 1041, line 31; R., 1040, line 61. In 1887, after a sealing voyage in the spring, she transshipped her skins on the west coast of Vancouver Island, and sailed for Bering Sea, carrying ten canoes and one hunting boat, with twenty Indians and six white men. She entered the sea June 28,

R., 1041, line 44; R., 1041, line 61; App. B, p. 151, line 56. and on the 30th lost a canoe. On July 2 the vessel, having on board 336 seal skins, was seized by the United States revenue steamer *Rush*, for violation of the municipal statutes of the United States. She was taken to Sitka, and, with her outfit and cargo, was libeled by the United States attorney for the District of Alaska, an appearance being entered for the vessel on behalf of her master and owner.

App. B, p. 153, lines 12, 20. On October 11, 1887, a decree of condemnation, forfeiture, and sale was entered against the schooner, her outfit and cargo. Subsequently the vessel, a portion of her outfit, and the seal skins seized were sold under the decree by the United States marshal.

By reason of this seizure the *Anna Beck* became totally lost to her owner.

Br. Arg., p. 114, line 33. The schedule attached to that portion of the Argument on behalf of Great Britain relative to the claim of this vessel contains an item for "list of stores on

board the schooner *Anna Beck* when seized, so far as the captain can recollect." The marginal reference to this item is "R., 1061-62." The part of the Record cited contains a list by Olsen, the master, of stores on board of the schooner at the time of seizure. The total value given by the witness of these articles is \$871.30. The item in the Argument is \$960.30.

An examination of this list given by the captain discloses that it contains a boat, a stove, and water tanks, which amount, according to the valuation given, to \$190, leaving a balance of \$681.30. Previous to the part of the Record cited, the following appears in the examination of Olsen:

Q. As to prices, have you a knowledge personally as to R., 1061, line the value of such articles at the time? 35.

A. I had of a few things, but not of the whole list. I had a knowledge of about one-third of the prices before I received a list to the effect that that should be the prices.

Q. Name the articles that you know the prices of?

A. Boat, boat compasses, tubular lanterns and lantern globes, fish lines, salt, pilot bread, and rice; that is all.

It is claimed, therefore, in view of this statement, that the valuation upon any of the articles included in the list, other than those referred to by the witness in the statement given, are not evidence of such valuation, and that in so far as James D. Warren, the agent of the owner, disagrees with Olsen in the amount of stores and their value, of which Olsen had personal knowledge, the statement of the latter must be accepted as the better evidence.

The item entitled "slop chest, \$95," rests on the R., 1141, line statement of Captain Warren, whose examination 35.

shows that he was ignorant of the amount of such property seized. Warren states that there were four R., 1141, line water tanks, and that "some of them were worth \$25." 36. Olsen gives in his list three water tanks. A claim is R., 1062, line made in the Argument for "four tanks, \$100." 1.

Claims appear in the schedule for "four shotguns, \$160," and "two rifles, \$45." Captain Olsen, in

reference to the arms on board the *Anna Beck*, testified as follows:

R., 1043, line 34. Q. What was done with the ammunition and arms of the *Anna Beck* after the seizure?

A. The ammunition was left on board in the store locker, and the guns were taken by the Indians and white hunters. When our Indians left the *Anna Beck* in Unalaska they hid the guns in their blankets in a certain way that nobody saw them.

Q. These were the eleven shotguns belonging to the ship?

A. Yes; the Indians took them from the *Anna Beck* on board the *Challenge* at the time we left Unalaska. They hid them.

Q. Do you know what became of the guns?

A. Well, they were partly lost. I think there may be three or four returned to the station of Captain Warren. They went to Victoria with the Indians, but they arrived in Sitka. Some were lost on the way down, because the Indians went home in three canoes from Sitka.

App. B, 162, line 20. On April 19, 1888, the United States marshal sold the 336 seal skins seized, and subsequently, the *fixed ammunition and five compasses*, which sales were confirmed by order of the United States district court.

App. B, 171, line 22. In the cases of the other vessels in 1887, the arms, App. B, 178, line 54, which were seized, condemned, and sold, are mentioned in the order confirming the sales by the marshal.

It is therefore claimed that there is no evidence that the firearms belonging to the owner or hunters were ever actually seized by the United States.

R. 1061, line 47. The item for sealing boat, cooking range, and flag are included in the list given by Captain Olsen.

App. B, 119, line 23. The item for "premium of insurance paid, \$572.28," refers to Exhibit No. 64 (G. B.), claims Nos. 6, 7, 9, and 10, from which it appears that the policy was canceled from July 21, 1887. The owner had had the benefit of his insurance up to July 2d, the date of seizure, and therefore this item should be reduced to the amount of premium for twenty days.

For the items "bedding," "estimated value of articles which were doubtless on board which can not be specifically mentioned," and "expenses at Sitka, \$100," there is no evidence to support the claim.

The item for "personal expenses in connection with such seizure and claims, \$250," is presumably based upon the following testimony of Captain Warren:

Q. And personal claims have been made of \$200. To what R., 1143, line
do they relate? 44.

A. That would be a proportion of my own personal expenses made in each of the cases.

It is shown that these personal expenses were incurred in the preparation of the claim for presentation at Ottawa.

The charge of \$750 for "counsel and other legal expenses in and about the claims arising out of the seizure" is based upon no evidence that there was any agreement of any kind by the owner or his agent to pay Belyea for services, or that the owner paid such charges or became liable for them.

The item for "sealing boat and outfit, \$140," is unwarranted, as it appears by the evidence that the Indians of the *Anna Beck* took it when they started for Victoria, the presumption being that it was returned to the owner. R., 1043, line
66.

The item "337 skins at \$6.50 each, \$2,190.50," being for a larger sum than would have been realized by their sale on the market at Victoria when the vessel would have presumably arrived there if she had not been seized exceeds the damage which the owner sustained by their seizure and condemnation to that extent.

A claim is made for \$19,500 for "balance of catch for the remainder of the season" of 1887. The claim is in the nature of future profits, which can not be recovered in any event, since the vessel was totally lost to her owner. The law which governs in such cases has been already discussed.

The items for "value of vessel, \$8,000," and "expenses and hardships of crew, \$13,000," and the personal claims of Olsen and Keefe have received full consideration at another place in this argument. Ante, p. 310.
Ante, p. 319.

THE ALFRED ADAMS.

CLAIM No. 8.

R., 1360, line 10. This claim was presented to this High Commission on the affidavit of William H. Dyer, who was captain of the schooner on her voyage in the Bering Sea in the year 1887.

The schooner entered Bering Sea July 10, 1887; was seized on the 6th day of August by the commander of the United States revenue-cutter *Richard Rush*, and ordered to Sitka, there to be surrendered to the persons representing the authority of the United States at that place. The crew consisted of captain, mate, 2 seamen, cook, and 21 Indians.

R., 1363, line 49. The commanding officer of the United States steamship *Richard Rush* caused to be taken from the *Alfred Adams* the following property: One thousand three hundred and eighty-two seal skins, 7 double-barreled shotguns, 3 Winchester rifles, 2 single-barreled muskets, and a small amount of ammunition of practically no value.

There is no evidence in the record that the *Alfred Adams* continued her sealing voyage after being seized, but her captain stated in the affidavit, read into the Record, that he refused to obey the instructions of the boarding officer of the *Rush* to proceed to Sitka, and instead started for Victoria, arriving at that port on the 31st of August.

R., 1360, line 64. British argument, p. 47, line 23. Moritz Gutman is the owner of one-half of this claim, and Alexander Frank, an American citizen, is the owner of half thereof.

Moritz Gutman, as the administrator of the estate of Jacob Gutman, deceased, made affidavit on the 9th day of November, 1888, as follows:

That the said firm of Gutman and Frank, having a claim against the Government of the United States of America for the amount of twenty thousand four hundred and thirty-three dollars, such claim being for the seizure of a sailing schooner known by the name of *Alfred Adams*, and owned by the said firm of Gutman and Frank, and of certain seal skins belonging to the said firm, and that proceedings have been commenced and are now being prosecuted for the recovery of such damages. Exhibits, p. 214, line 19.

In the affidavit of Moritz Gutman, of November 9, 1888, he asked the probate court for authority to sell the assets of Jacob Gutman, "excepting thereout the said claim of twenty thousand four hundred and thirty-three dollars against the United States authorities."

Alexander Frank swore in his affidavit, executed on the 30th day of April, 1888, that the firm of Gutman & Frank did at one time own the *Alfred Adams*. In this affidavit, dated April 30th, 1888, he made oath that he was a half owner of "one other schooner, also registered at the port of Victoria in the name of Jacob Gutman, and under the name of *Lily*, but formerly called the *Alfred Adams*." Exhibit, 210, line 50.

It is admitted, on behalf of Great Britain, that Alexander Frank was equally interested in the operations of the *Alfred Adams* for the year 1887. He is, therefore, equally interested in the claim as filed before this High Commission, inasmuch as the claim is one entirely relating to the cargo or earnings of the ship, and not for the value of the hull.

Opposed to this, the Government of the United States claims that at the time of the seizure of the *Alfred Adams*, Alexander Frank was not only interested in the venture of the ship, but was an owner of one-half.

Accordingly, the Government of the United States denies any liability to Alexander Frank or his partner in business, for the reason that he was an American citizen at the time of the seizure and can not receive damages for his act committed in violation of the municipal laws of his own country.

Exhibit 80, claim No. 8; Exhibit a carrying capacity of 68.75 registered tons.

its, p. 197. The claim is in the nature of a claim for partial loss and the measure of damages is the charter value, or demurrage of the *Alfred Adams* from the date of the seizure, August 6, to the termination of the sealing season in Bering Sea in the year 1887, that is, the 20th or 25th of August, in addition to the value of the seal skins and guns seized and condemned.

There is no testimony in the Record upon which to base the claim "legal expenses, \$300," or the claim "personal expenses, \$200," and no testimony is cited in the Argument on behalf of Great Britain.

the United States
bank or his part-
ner was an Ameri-
can and can not
be in violation of
the law.

in 1851 and had
100 tons.

claim for partial
the charter value,
from the date of
seizure of the seal-
skins, that is, the
value of the
skins.

upon which to
settle, or the claim
of the United States
is cited
in Britain.

THE GRACE AND THE DOLPHIN.

CLAIMS NOS. 9 AND 10.

The *Grace* and *Dolphin* were schooners having auxil-
ary steam power and a registered tonnage of 76.87 and
60.10, respectively.

The vessels being owned at the time of their seiz-
ure by Thomas H. Cooper, a civil citizen of the
United States, any liability on the part of the United
States to this claimant is denied.

In 1887 the schooners, after sealing on the coast,
entered Bering Sea in company, July 6. On July
12 the *Dolphin*, with 618 seal skins on board, was
seized by the United States revenue steamer *Bear*;
and on July 17 the *Grace*, with 769 seal skins on
board, was also seized by the same revenue cutter.
The two vessels were towed to Unalaska and from
there sent to Sitka. The *Dolphin* arrived on July 31
and the *Grace* the day following. On September 11
the *Grace*, her outfit and cargo, were libeled by the
United States attorney for the District of Alaska for
violation of the statutes of the United States. On
September 13 the *Dolphin*, her outfit and cargo, were
also libeled.

Appearances were entered for each vessel on behalf
of her owner. On October 11, 1887, decrees of con-
demnation, forfeiture, and sale were entered against
the schooners, their outfits, and cargo.

Subsequently the vessels, portions of their outfits,
and the seal skins seized were sold under the decrees
by the United States marshal. By reason of their

App. B. p. 116,
line 55; p.
11, line 55;
Claims in
Br. Case,
Am. Rep.,
vol. 4, pp.
158, 168.

R., 1860, line
55.

R., 1861, lines
13, 22.

R., 1145, line
94; R., 1127,
line 37.

App. B, p.
172, App.
B, p. 163.

App. B, pp.
166, 174.

seizure the *Grace* and *Dolphin* became totally lost to their owner.

Br. Arg., pp.
122, 123.

Ante, p. 314.

Ante, p. 319.

Claims in Br.
Case, Am.
Rep., vol.
4, p. 207.

R., 618, line
43; R., 1617.

R., 1143, line
49.

The items attached to the schedule of the damages claimed in the case of each vessel, which appear in the Argument on behalf of the claimant, those for "value of vessel," "expenses and hardships of crew," and those for the personal claims of the captain and mate of each vessel have been already considered.

The attention of the High Commissioners is called to the fact that there was no mate of the schooner *Grace*, and no claim on behalf of one was made in the claims submitted at Paris.

The witness Norman, who testified to having acted as mate of the vessel, was the engineer, and his testimony shows that he was not detained or imprisoned at Sitka.

The item in each schedule for "Legal expenses, \$850," is composed of charges by Belyea and by counsel at Sitka. The former, so far as the Record discloses, were for the preparation of the claims for presentation at Ottawa, and there is no evidence that the owner is even contingently liable for their payment. The legal expenses, which it is claimed were incurred at Sitka, are not shown to have been paid by the owner, or that he contracted to pay them.

The items included in the schedules for "flag," "bedding," "estimated value of articles which were doubtless on board the vessel, and which can not be specifically mentioned," "passage of master and crew, \$200," have no evidence to support them.

"Time and personal expenses, \$250," are not properly included in the schedules, being incurred, if at all, in the preparation of the claim for presentation at Ottawa, and being covered by the item charged in the Thornton claim.

A claim is made in the case of the *Grace* for "balance of catch for the remainder of the season" of

me totally lost

of the damages
which appear in
nant, those for
ships of crew,"
the captain and
y considered.

sioners is called
f the schooner
was made in the

to having acted
er, and his testi-
er imprisoned at

legal expenses,
Belyea and by
as the Record
the claims for
o evidence that
e for their pay-
s claimed were
have been paid
o pay them.

les for "flag,"
les which were
uch can not be
aster and crew,
em.

"are not prop-
incurred, if at
or presentation
tem charged in

Grace for "bal-
the season" of

1887, \$19,500, and a similar claim is made in the case of the *Dolphin* amounting to \$22,100. These claims are for future profits which can not be recovered in any event since the vessels were totally lost to their owner. The law which governs in cases *Ante*, p. 101. of total loss has been already discussed.

The items in the schedule of the claim made for the *Grace*, "three iron tanks, twelve water casks, twelve guns, three rifles, cannon, gun tools, two boats, cook stove," are based upon the statements of James D. Warren, the managing agent of the owner *R.*, 1139. The testimony of this witness shows that his evidence relates to the cost of these articles, and not to their value at the time of seizure. In connection with the different articles in regard to which he was questioned, he stated as follows:

That is just what they would cost.

R., 1139, line
43.

Q. How much should you say they were worth?

R., 1139, line
56.

A. That is about what they cost.

Q. How much would that cost?

A. Fifty dollars.

Q. That is the cost price?

R., 1139, line
66.

A. Yes.

There is nothing in the Record to determine whether or not the articles were new when seized, but since the vessel had sailed throughout the season of 1886, the presumption is that many, if not all, had been used for over a year and were not worth their cost price at the time the vessel was seized.

The item for "twelve guns and three rifles" appears *R.*, 1139, line 51. to rest upon the testimony of Warren. The return of a part of them, and the subsequent purchase of the balance by Warren, are discussed in connection with similar items appearing in the schedule of the *Dolphin*.

The item in the schedule "insurance, \$848.75" is

App. B, 102,
line 25.

based upon a statement in Exhibit No. 64 (G. B.) claims Nos. 6, 7, 9, and 10. By this it appears that the policy was canceled on August 18th, and the only damage that the owner could have sustained by reason of the seizure was the amount of premium for the thirty-one days from July 17th to August 18th, having received the benefit of his policy from January 3, 1887, to the date of seizure.

The item "769 skins, at \$6.50 each, \$4,998" will be discussed in connection with a similar item appearing in the schedule of the damages claimed in the case of the *Dolphin*.

R., 1165, line
30.

In the cross-examination of Captain Warren, he made the following statement:

I chartered her [the *Grace*] to the United States marshal, and the United States marshal allowed us to take all the provisions that was left on the *Grace* and the *Dolphin* to help fit her to go to Unalaska to bring the skins.

R., 1165, line
50; 1179,
line 28.

For this charter Warren received \$2,500, out of which the wages of the captain, mate, and crew were paid, leaving a balance in the hands of Warren of \$2,030. No reference is made in the British Argument to this charter, and no deduction is made for the money received therefor. It is claimed that from whatever amount of damages sustained by the owner as a result of the seizure there must be deducted the sum thus received by Captain Warren.

In the case of the *Dolphin* the items for "slop chest," "iron tanks," "casks," "26 guns at \$40 each," "10 muzzle-loading guns at \$20 each," "4 rifles at \$22.50 each," "bomb guns," "tools," and "cooking stove," are based upon the testimony of Captain Warren, and what has been said in reference to his testimony in considering similar items in the schedule of the damages claimed for the *Grace* equally apply here.

R., 1171, line
51.

The firearms mentioned in this schedule are derived from a list contained in an account book, from which

No. 64 (G. B.).
it appears that
18th, and the
have sustained
of premium
17th to August
his policy from
re.

h, \$4,998" will
similar item ap-
ges claimed in

ain Warren, he

l States marshal,
as to take all the
he *Dolphin* to help
s.

\$2,500, out of
and crew were
s of Warren of
e British Argu-
is made for the
med that from
d by the owner
be deducted the

a.
ems for "slop
s at \$40 each,"
ach," "4 rifles
s," and "cook-
ony of Captain
reference to his
in the schedule
e equally apply

lule are derived
ok, from which

the witness Warren testified. In his examination in reference to this account book, and particularly to this list on which the item for firearms in the opposing Argument is based, Warren testified:

Q. And at the foot is this statement, "The guns returned." R., 1162, line 27.

A. Yes; that is, the Indian guns. That statement is that 14 were returned and that one of my own, a private fowling piece, was returned.

* * * * *

The Indians on the *Dolphin* got their guns back; I do not know, but I suppose that the Indians on the *Grace* got theirs back also. They were there at the time and I know they were given what they claimed. R., 1159, line 37.

Q. Do you mean by "their guns" guns furnished them by you?

A. No; their own guns. There were quite a number of them seized.

Q. Were there any guns on the *Dolphin* besides those you did not get back?

A. Yes; quite a lot.

Q. How many?

A. There was about 21 shotguns and about 4 rifles, as near as I can remember.

Q. Do you mean belonging to the *Dolphin*?

A. Yes, sir.

It is apparent, therefore, from this evidence that the "ten muzzle-loading guns" and five of the shotguns were returned, which would corroborate the statement of the witness of the number of guns taken as "about 21 shotguns and about 4 rifles."

The witness Warren states that he bought some of these guns at auction when they were sold by the United States marshal in April, 1888. The sale to which reference is made occurred on April 19, 1888, at Sitka, at which time the sale of seal skins also took place. The guns of the *Dolphin* were purchased by Warren for \$299.50, and those of the *Grace* for \$91.50. R., 1159, line 55. R., 1170, line 45. App. B., 171, line 16. App. B., 171, line 23. App. B., 178, line 48.

Subsequently to this sale the marshal sold "guns, ammunition," etc., from the schooner *Dolphin*, for \$62.41, and "guns, ammunition," etc., from the schooner *Grace* for \$135.27. As these latter sales App. B., 171, line 25. App. B., 178, line 54.

included the ammunition which was taken from the vessels, it is apparent that the majority of the guns were disposed of at the sale which took place on April 19, at which Captain Warren was the purchaser in both instances. There is no evidence before the Commission that the guns were not in as good order at the time of sale as when they were seized, or that they had not received proper care. On his redirect

R., 1170, line 54. examination the witness was asked whether he had an opportunity to inspect them, or if he knew what care had been taken of them from the time of seizure until the auction took place; he was *not* asked in what condition the guns were, or how many he purchased at that time. It is therefore claimed by the United States that the only damage which the owner sustained by reason of the firearms seized was the amount which Captain Warren paid out at the Marshall's sale, namely, \$299.50 and \$91.50.

App. B, p. 120. The item "insurance, \$722.71," is founded upon the statement in Exhibit No. 64 (G. B.), Claims Nos. 6, 7, 9, and 10. It appears therein that the policies were canceled on August 2, 1887; the only damage in this particular, therefore, which the owner suffered was the amount of premium from July 12, the day of seizure, up to August 2, when the policies were canceled, he having had the benefit of the insurance from January 3, 1887, when the policies were issued, up to the time of the seizure.

The item "ammunition extra" has no evidence to sustain it.

In reference to the claim for "618 skins, at \$6.50 each, \$4,017," and the claim for "769 skins, at \$6.50 each, \$4,998," for the *Grace*, the Record discloses that they were purchased by Warren at the sales which took place on August 19, 1888, to which reference has been made. His testimony is:

R., 1181, line 40. Q. Can you make a statement of the seals you have bought from the various vessels: You told us that you thought you could do so.

A. Yes; it is as follows.

Schooner.	Seals.	Price each.
Alpha	389	\$3.65
Lottie Fairfield	443	3.70
Dolphin	618	3.75
Grace	769	3.30
Alfred Adams	1,378	3.30

That is the lot that I bought, but on a division I got 127 more.

The returns of the United States marshal for these sales show that he realized from the seal skins on the *Dolphin* \$2,235 and from those on the *Grace* \$2,537.70. App. B, p
171, line 18;
178, line 45.

The owner, having procured the skins for these amounts, sustained damages by reason of their seizure only to the amount which was actually paid for them to the United States marshal.

B S—26

THE ADA.

CLAIM No. 11.

- R., 1210, line 31. The *Ada* was a schooner of 65.23 tons register. Her owners in June, 1887, were J. J. Gray and W. E. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1212, line 48. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1213, line 48. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 788, line 28; 1214, line 21. and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1211, line 50. The *Ada* when seized had in fact completed her seal hunting in Bering Sea, James Gaudin, the captain, having stated that the length of his voyage would be determined absolutely by the weather. The schooner *Allie I. Alger* was seized on the same day, a short time before the *Ada*. Charles E. Raynor, the master of the *Alger*, testified that he had finished sealing for the sea-
- R., 1216, line 20. September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1288, line 40. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1297, line 47. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1298, line 42. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1277, line 25. Pine. She sailed from Victoria for Bering Sea on June 17, 1887, carrying seven canoes, one hunting boat, and a stern boat. She entered the sea July 16, and continued sealing in those waters until the morning of August 25, at which time she was seized by the United States revenue steamer *Bear*, having on board 1,876 seal skins. She was towed to Unalaska, where she remained two days, her seal skins and firearms being removed. From that port she was sailed by her crew to Sitka under orders of the commanding officer who made the seizure, where she arrived September 5. September 13 the vessel, her outfit and cargo were libeled by the United States attorney for the District of Alaska, and on October 11 a decree of condemnation, forfeiture, and sale was entered. On the same day one W. Clark filed a claim of owner, stating therein that he was the duly authorized attorney for "— Craig, owner." The vessel was subsequently sold under the decree. By reason of the seizure she became totally lost to her owners.
- R., 1217, line 50. The *Ada* when seized had in fact completed her seal hunting in Bering Sea, James Gaudin, the captain, having stated that the length of his voyage would be determined absolutely by the weather. The schooner *Allie I. Alger* was seized on the same day, a short time before the *Ada*. Charles E. Raynor, the master of the *Alger*, testified that he had finished sealing for the sea-
- R., 1247, line 58. *Allie I. Alger* was seized on the same day, a short time before the *Ada*. Charles E. Raynor, the master of the *Alger*, testified that he had finished sealing for the sea-

son, and that he had attempted to leave the sea the night before. Upon cross-examination Captain Raynor was asked: "What preparation had you made on the 24th?" To which he answered: "I turned my boats all bottom up on deck and lashed them, and stowed everything away and made fast." The evidence relating to the duration of the season in the year 1887 has been collected and discussed in another part of this argument, entitled "Duration of the sealing season," where it is shown that the hunting period for that year ended between the 20th and 25th of August. It is therefore claimed by the United States, from the testimony in general, and from that of Captain Raynor in particular, that the weather had become unfavorable for sealing purposes by the 25th of August, 1887, and that, as the weather was to determine the extent of her cruise, the voyage of the *Ada* was ended; and, furthermore, she had secured a catch, which demonstrates that her season was over.

Ante, p. 228.

The item for \$120 in the claim presented in the Argument on behalf of Great Britain termed "Premium of insurance" can not be allowed, as the voyage was completed and she had received the benefit of such insurance.

It appears from the evidence of James Gaudin, the master, that the canoes which were carried by the *Ada* were delivered into the possession of the Indian hunters. This fact was brought out upon the cross-examination, and the witness in his redirect examination modified his statement only in the particular that he did not know whether they were given to the Indians, but he states that *orders had been given by the court to release the canoes*. It is therefore claimed by the United States that as no evidence is produced to show that the order was not obeyed, and that the Indians had, previous to the departure of Gaudin, been in possession of their canoes, the presumption is that the canoes were retained by the hunters; and,

R., 1218, line 3.

R., 1221, line 42.

R., 1218, line 21.

tons register.
Gray and W. E.
Bering Sea on
s, one hunting
the sea July 16,
until the morn-
was seized by
Bear, having on
d to Unalaska,
skins and fire-
she was sailed
the commanding
he arrived Sep-
her outfit and
es attorney for
11 a decree of
entered. On
aim of owner,
thorized attor-
ssel was subse-
reason of the
owners.
pleted her seal
n, the captain,
yage would be
The schooner
y, a short time
e master of the
ng for the sea-

furthermore, that the canoes being the property of the Indian hunters, Great Britain is not entitled to present a claim for them in any event.

R., 1213, line 47. The *Ada* carried one hunting boat and a stern boat. The latter belonged to the vessel and her outfit, and would therefore be included in the valuation of the schooner. It is shown by the accounts submitted in evidence by the claimant, J. J. Gray,

R., 1228, line 59. that in May he purchased three sealing boats, which, delivered at Victoria, cost him \$420.57. One-third of the sum would be \$140.19. As the boat seized had been used at the time of seizure for one season, it would have depreciated in value about one-third.

R., 797, lines 42, 55, 59. C. A. Lundberg, the mate of the *Ada*, stated in his examination that the shotgun which he used was returned to him, and that he saw some hunters of the *Ada* getting theirs also. He further stated that anyone who claimed his gun received it. It is therefore contended on the part of the United States that the guns of the vessel were returned to the hunters, and that upon such delivery the United States became no longer liable for their seizure.

R., 790, line 1. It appears from the evidence of the mate that the voyage from Unalaska to Sitka occupied nine days,

R., 792, line 26. and that the provisions on board were sufficient to maintain the crew and hunters for only ten days after their arrival at Sitka; that besides the provisions used

R., 792, line 47. by the crew, a policeman took from the schooner's supplies 75 pounds of beef, 2 mattes of rice, and half a bucketful of butter. It would, therefore, seem that at the time of her seizure the *Ada* had on board scarcely, if any, more provisions than were necessary for her

R., 1945, line 55. return voyage to Victoria. The witness Louis Olsen gave the cost of provisions per month for an Indian

R., 1944, line 3. as between \$3.10 and \$3.25, and for a white man

R., 1245, line 54. from \$11 to \$12. The *Ada* carried seven white men and fourteen Indians, for which the provisions would

the property of
not entitled to

at and a stern
vessel and her
ed in the valua-
by the accounts
nt, J. J. Gray,
g boats, which,
57. One-third
the boat seized
for one season,
out one-third.

la, stated in his
he used was
ome hunters of
her stated that
it. It is there-
ited States that
to the hunters,
United States
are.

e mate that the
pied nine days,
ere sufficient to
y ten days after
provisions used
the schooner's
rice, and half a
fore, seem that
board scarcely,
ecessary for her
ss Louis Olsen
h for an Indian
a white man
even white men
rovisions would

have cost, for the twenty-one days from seizure to the time the provisions failed, approximately \$90.

There is no evidence in the Record as to the amount of "ammunition, ship chandlery, etc.," for which claim is made in the British Argument, other than the ammunition referred to in the log of the *Bear*, the value of which is not determined by the evidence. Br. Arg., 128,
line 38.
R., 1245, line
56.

There is no evidence before the Commissioners as to the "bedding" claimed to have been seized on the *Ada*, or the value of such "bedding;" or as to the value of the "nautical instruments, etc.," seized.

The item for \$600 for "estimated value of other unconsumable sealing outfit and articles which were doubtless on board the vessel, but which can not be specially mentioned," is an excessive and exorbitant claim, which has no foundation in fact to support it.

There is no evidence that an attorney was employed by the owners of the vessel, or their agent, for the defense of the vessel at Sitka; and that whatever services were performed by Mr. Clark as the proctor of record, which appear to have been solely the filing of a claim of owner, were done on his own motion, and without any authority whatsoever, and, further, that the owners did not become liable for such services. R., 1298, line
45.

The item entitled "Expenses and hardships of crew 22 at, say, \$500" (which has been erroneously included twice in the schedule of damages, and appears to have been included in the sum total), are personal claims, which, not having been presented to the Tribunal of Arbitration at Paris, and not having been included in the "additional claims" referred to in the preamble of an appendix to the Convention of February 8, 1896, can not be allowed by this High Commission, and could not be in any event, even if there was sufficient evidence to establish such claims, which the United States insist there is not.

Gray, the managing owner of the *Ada*, stated in his examination that he was unable to tell who employed R., 1235, line
52.

Belyea in connection with the *Ada*, and there is no evidence before the Commission showing that Belyea was employed by the owners or their agent in the preparation of this claim at Ottawa, or that they became obligated to pay him any sum whatsoever. The item in the Argument on behalf of Great Britain entitled "Belyea's charges" is unwarranted, and has no evidence to support it.

There appears in the schedule referred to an item entitled "Personal expenses of owner from Yokohama." The evidence discloses that Gray, the managing owner, arrived from Yokohama on the *Ada* early in April, 1887, and that after the vessel sailed for Bering Sea he returned to Japan. In October or November, 1887, he received a cablegram from Moss, his agent at Victoria, informing him of the seizure of the schooner, but he did not return to Victoria for a year from the time of its receipt. A letter was produced which was received by him from Moss in the latter part of November, 1888, relative to the bonding of the vessel, upon the receipt of which he claimed to have returned to Victoria; but in view of his former knowledge, and presumable correspondence with his agent, Moss, the implication that the seizure was the immediate cause of his return to Victoria can not be admitted. As his place of residence was that city, and has been such up to the present time, the claim for his expenses from Yokohama to his home, which are exorbitant in amount, should not be allowed in any event.

It appears from the testimony of Gray that Moss, the agent of the vessel and of the *Penelope*, also owned by Gray in 1887, was a purchaser of seal skins in the Victoria market. As he guaranteed the payment of a part of the outfit accounts of the *Ada* in 1887, and as there is no evidence that he received any remuneration for his services, the presumption is that he took the responsibility of agent

R., 1226, line
24.

R., 1226, line
42.

R., 1226, line
45.

R., 1231, line
31.

R., 1234, line
10.

R., 1235, line
15.

R., 1932, line
23.

nd there is no
ng that Belyea
r agent in the
r that they be-
atsoever. The
reat Britain en-
ed, and has no

red to an item
er from Yoko-
Gray, the man-
a on the *Ada*
he vessel sailed
. In October
ablegram from
ng him of the
t return to Vic-
ept. A letter
him from Moss
relative to the
ept of which
a; but in view
ble correspond-
ation that the
return to Vic-
e of residence
to the present
Yokohama to
unt, should not

ray that Moss,
Penelope, also
chaser of seal
he guaranteed
counts of the
lence that he
vices, the pre-
bility of agent

and guarantor for the purpose of securing as a dealer the seal skins which the *Ada* might take in her northern cruise, and that the catch of the *Ada* would have been therefore marketed at Victoria.

The claim for "estimated catch," being for prospective profits, can not be allowed, as the vessel was a total loss to her owners.

The value of the vessel and the personal claims of Ante, p. 315. James Gaudin and C. A. Lundberg have been already Ante, p. 319. considered.

The United States admit that the owners suffered damage by reason of the seizure to the amount of the value of the *Ada*, in the condition which she was when seized, in the market of Victoria at that time, of the market value of the articles, not properly included as a part of the vessel itself, in the condition and at the time when they were taken from the schooner by the United States, and of 1,876 seal skins at the price ruling in the market at Victoria at the time when the vessel would, in the natural course of events, have returned to that port in 1887.

THE TRIUMPH

CLAIM No. 12.

The statement of the claim of the owners of this vessel, filed at Victoria, sets out the departure of the *Triumph* for Bering Sea, the warning given by the revenue cutter *Richard Rush*, and alleges: "That in consequence of the illegal boarding, searching, warning, and threats of seizure, made use of by the commander of the said cutter, the master of the *Triumph* abandoned his intended voyage into Bering Sea."

Pleadings, claim No. 12.

The cross-examination of several witnesses, testified before the case of the *Triumph* was opened, developed the fact that this vessel had been sighted in the Bering Sea after the day upon which she claimed to have abandoned her voyage.

The first witness sworn on behalf of the claimants, and the only witness giving testimony bearing directly upon the occurrences at the time of the warning, was Herman Smith. He stated that he was mate of the

R., 1396, line 60; R., 1397, line 3. vessel during her voyage in 1887; that the captain was dead, and that he had no log of the voyage.

R., 1397, line 10, 12. The *Triumph* left Victoria for her voyage to Bering Sea "about the 20th or 21st of May." She carried four canoes and a crew of eight Indians. Before entering Bering Sea 52 or 54 seal skins were taken.

R., 1397, line 17.

On the 4th of August, while lying becalmed at the entrance to Unimak Pass, at 8 o'clock in the morning, she was boarded by an officer from the United States revenue cutter *Richard Rush*, who examined the vessel, returned to the cutter, whereupon Captain Shep-

R., 1397, line 20.

ard, commanding the *Rush*, hailed the *Triumph* and warned her not to enter Bering Sea.

The captain of the *Triumph*, the mate, and the Indians, Smith says, talked over the matter of continuing or abandoning the voyage, the result being that the captain gave Smith to understand "that he thought it would be best to go on some different sealing ground." R., 1398, line 43.

The mate says "he was compelled to enter Bering Sea because of the gale that sprang up that night, and we were so close inshore that we either had to go on the rocks or run before the gale." R., 1398, line 64.

Q. But, as a matter of fact, the vessel entered Bering Sea?

A. Yes, sir.

Q. And, as you understood it, she made in what direction?

A. *Westerly*.

The hunting boats of the vessel were lowered on the 5th day of August, the day after the warning, when 19 seals were taken, and on the following days thereafter, with the results stated: R., 1400, line 30.

August 8th, 9 seals; 9th, 42; 10th, 34; 11th, 33; 12th, 25; 13th, 32; 14th, 24; 15th, 34; 16th, 3; 17th, 35; 18th, 2; 19th, 18; 20th, 27; 21st, 4; 22d, 14; 23d, 33; 24th, 15; 25th, 33.

The *Triumph*, therefore, entered Bering Sea the night of August 4, and the next day commenced hunting, and continued without interruption, save by the weather, until the 26th of that month. R., 1401, line 50.

What claim for damages this little vessel of 15 tons, which, according to the mate, hunted more days while in the sea than any vessel a detailed account of whose voyage is given in the record, and which remained in the sea until the 26th of August, can have against the Government of the United States, that Government can not conceive. R., 1396, line 42.

The mate, Smith, makes some vague assertions about being off the sealing grounds, but his testimony should be scrutinized very carefully in the light of

the statement of this claim, which gives the information that the intention of the claimants was to establish the fact that their vessel did not enter Bering Sea.

The testimony bearing upon the location and movements of this vessel between August 4 and August 26 conclusively establishes that she hunted continuously during that period, being westerly between the northward of Unimak Pass and Four Mountain Pass, taking a course far enough to the northward so that Bogoslof Volcano was over 50 miles to the south.

R., 1486, line 14.

R., 1402, line 39.

Q. We were talking about this storm. When this storm was blowing you into Bering Sea, after you got through Unimak Pass, did you change your course to go to the westward?

A. So far as I can recollect, *our course was always westerly* after we went through the Unimak Pass.

R., 1402, line 50.

The vessel then hunted for twenty-one days, during which time she could cover but a small distance, as a vessel is unable to sail far while her canoes are out.

R., 1403, line 2.

Q. How many miles of ground a day will canoes cover in an ordinary sealing day while sealing?

A. Twelve to 15 miles.

Q. And every day that the canoes lowered off your vessel the vessel would go about 12 miles?

A. Yes.

R., 1403, lines 29, 36.

Q. And you went out of Four Mountain Pass?

A. Yes.

Q. And you think your course was always westward?

A. *Always westerly, wind and weather permitting.*

Q. From Unimak Pass?

A. *From Unimak Pass.*

This witness was examined on behalf of the claim of the *Ariel*:

R., 1486, line 5.

Q. And you were in Bering Sea in 1887, I believe?

A. Yes, sir.

Q. You cruised southeast of the Islands in 1888, and you cruised in the vicinity of the Bogoslof Volcano in 1887?

A. How near do you call the vicinity?

Q. Well, about 50 miles to the northward.

A. Oh, no; it was farther off than that.

The witness apparently remembered that his testi-

mony might have a bearing on the claim of the *Triumph*, for to the next question which was asked, "How far to the northward?" he answered, "I did not hunt to the northward; I hunted to the westward in 1887."

This testimony establishes the fact that the voyage of the *Triumph*, in 1887, covered the waters between Unimak Pass and Four Mountain Pass, at a distance to the northward more than 50 miles from Bogoslof Volcano.

In the attempt of the witness to avoid the effect of this testimony, he said that he did not seal to the northward of Bogoslof in 1887, but to the westward. When compared with his statement that the boats of the *Triumph* were lowered on the next day after entering Unimak Pass and before the vessel had proceeded to the westward, and that thereafter hunting was carried on for a period of about twenty days, this witness is convicted either of dense ignorance as to the location of his vessel and the geography of Bering Sea, or of making a false statement regarding the course of the *Triumph* in 1887.

The course of the *Triumph* from north of Unimak Pass to the westward at a distance more than 50 miles to the northward of Bogoslof Volcano, and from north of Bogoslof southwest to Four Mountain Pass, would take the schooner through the waters hunted over by the *Kate* in 1889, *Alfred Adams* in 1887, *Mary Ellen* in 1886, the *Theresa* in 1886, and *Mary Ellen* in 1887. The *Anna Beck*, *W. P. Sayward*, and the *Dolphin* were all seized between $54^{\circ} 30'$ and 55° , and 167° and 168° , and if the *Triumph* sailed from the northward of Unimak Pass westward at a distance 50 miles north of Bogoslof, its voyage would be directly through the waters in which these vessels were hunting when seized, and which the Argument on behalf of Great Britain alleges are "the best sealing grounds in Bering Sea."

Refer to the charts or maps cited in the British

Argument as bearing upon the locality where seals are found in Bering Sea, and trace the voyage of the *Triumph*. She sailed directly over the so-called sealing grounds.

That the *Triumph*, which sealed some 21 days out of a possible 23, between $165^{\circ} 30'$ and 169° , and $54^{\circ} 30'$ and 55° , did not sustain any damages by reason of the warning given by the United States revenue cutter *Richard Rush* is abundantly established.

If the *Triumph* had been deprived of an opportunity to take seals the results secured by her hunters might certainly be expected to establish the fact.

Arg. on behalf of Great Britain, p. 79. The Argument on behalf of Great Britain states that the *Mary Ellen* is the vessel which should be made use of as a basis for calculating the catch of other schooners. The *Mary Ellen* made an average catch of 6.74 seals per day from the 5th of August. The statement is made in the Argument (p. 79, line 9) that boats have one-third more working power than canoes, which would make the average daily catch of the *Mary Ellen*, had she used canoes, 5.055. The *Triumph* carried four canoes, making her average daily catch for all the hunters 20.22 skins, which, multiplied by 21, the number of days she hunted, her total catch would be 424. But as a matter of fact the *Triumph* took 436 seal skins during that period.

R., 1400, line 43.

This calculation, made upon the basis which is the most advantageous that could possibly be obtained from the Record, fails to establish the claim that the *Triumph* was deprived of the opportunity to take seals by reason of not venturing upon the "best sealing grounds."

Some vague testimony was adduced, bearing upon the duration of the voyage of this small vessel, but the United States rest upon the general testimony regarding the close of the season in Bering Sea, and believe that the voyage of the *Triumph* was completed on the 26th day of August, having continued

lity where seals
the voyage of
er the so-called

me 21 days out
and 169^b, and
ny damages by
e United States
ntly established.
d of an oppor-
l by her hunters
ish the fact.

t Britain states
hich should be
ng the catch of
ade an average
5th of August.
ment (p. 79, line
working power
e average daily
l canoes, 5.055.

ing her average
2 skins, which,
she hunted, her
matter of fact the
at period.

sis which is the
ly be obtained
e claim that the
ity to take seals
e "best sealing

l, bearing upon
small vessel, but
eral testimony
Bering Sea, and
mph was com-
ving continued

without interruption and without reference to the warning given by the cutter *Richard Rush*.

The nature of the testimony depended upon to establish a claim for a season extending to the 15th day of September removes all doubt, if any exists, as to the duration of the voyage.

Q. When you left for the voyage had you any conversation R., 1400, line
with the owner of the vessel as to the time that you were to 55.
remain in Bering Sea in 1887?

A. Well, yes; several conversations on that subject.

Q. To what effect?

A. That from hearsay, from those who had been to Bering Sea before, that we could make a good catch the latter part of August and the beginning of September. At that time a fine spell of weather is expected, and I had a thorough understanding with Mr. Byrns, myself being on a lay, that the vessel should be provisioned to such an extent of time that it would enable us to stay until we were driven out by the weather or could not find any more seals.

Q. Had you been in Bering Sea before that time?

R., 1403, line
54.

A. No, sir.

Q. Had the captain?

A. No, sir.

There is no testimony in the record upon which to base the claims for "proportion of Warren's expenses to Ottawa, \$152," and "expense of owner, \$200," and "Belyea's charges, \$250," and no testimony is cited on behalf of Great Britain.

The Government of the United States contends that the *Triumph* continued her voyage after the warning without interruption, secured an unusually large catch, and having hunted the full season, sailed for Victoria, where her catch was sold, and that no damage resulted to the owners from the warning given by the cutter.

THE JUANITA.

CLAIM No. 13.

R., 1339, line 41. The *Juanita* entered Bering Sea on the 2d day of July, 1889, and commenced her sealing operations on the 10th of July. She was seized on the 31st of the same month by Captain Shepard, of the United States revenue-cutter *Richard Rush*.

R., 1340, line 34. The crew consisted of 14 Indians, the captain, and 3 sailors. There is no evidence bearing upon the number of canoes carried by the *Juanita*, but the fair presumption is that she had 7, inasmuch as she carried 14 Indians. The stern boat was not used for hunting to any extent.

R., 1339, line 20. The cutter seized 619 seal skins and the spears of the Indians.

R., 1338, line 40. There is no evidence that any seals were taken after the 31st day of July or that the boats were lowered.

Captain Clarke, also one of the owners, testified:

R., 1340, line 68. Q. Up to what time did you intend to stay in the sea?

A. We intended to stay in the sea up to the beginning of September.

Q. Had you arranged that before you left Victoria?

A. To the best of my belief at the present time, and what transpired afterwards, I believe the 10th September was the day mentioned by Mr. Hall. He said that we could stay longer. I think that he had had information from someone who had been there that seals had been caught in September, and that the season was not actually closed.

The answer of the witness not being satisfactory, he was pressed, on direct examination, for the purpose

of obtaining an answer giving a later date for the closing of the sealing season:

Q. And it was your intention to stay until the beginning of September that year—up to about the 14th? R., 1341, line 17.

A. I think that the 10th was the day mentioned.

The only other testimony in the Record bearing upon the proposed duration of the voyage of the *Juanita* was given by Richard Hall, one of the owners:

Q. What length of voyage was your vessel fitted out for when she went to Bering Sea? R., 1349, line 26.

A. When the captain left I told him to stay on until some time in September. I do not remember exactly what date.

Q. Had you information that there was any use staying until September?

A. Yes; I was told by some one in the sealing business that there was sealing to be done in September.

Q. And you made up your mind to try that?

A. Yes; I told the captain to stay in till September, if possible.

On cross-examination this witness testified:

Q. Who told you that they got seals in September in Bering Sea? R., 1350, line 6.

A. I am not certain, but I think that it was Victor Jacobson, the captain of the *Minnie*.

Q. Were you told that they caught seals in September the year before—1888?

A. It was in the fall of 1888 that he told me. He told me to have the schooner stay in September, as there had been sealing in September.

Q. Did he say that they had been sealing in September in 1888?

A. I will not say that, but he advised me to have the schooner stay in in September.

And again:

Q. You outfitted, you say, until the middle of September? R., 1351, line 35.

A. I will not say that I told him to stay until any certain date in September. I think that it would be about the 10th of September that he would be supposed to leave there.

Upon this testimony the claim is based that the sealing voyage of the *Juanita* would have ended on the 15th day of September. The testimony is that

of two owners, it is based upon a vague rumor that one vessel had taken seals in September in the year 1888, and it was concluded that it might be profitable to attempt to prolong the voyage of the *Juanita* until the 10th of September.

It is, of course, to the interest of these claimants to extend the sealing season as far as possible into September, but this testimony certainly will not warrant the finding that the time during which they were deprived of the use of their schooner extended until the 15th day of September.

The High Commissioners have more authentic testimony of the basis of the rumor upon which Mr. Hall based his testimony regarding the proposal to remain in Bering Sea until the 10th of September than Mr. Hall himself had.

Capt. Victor Jacobsen, who is also a claimant, was examined relative to the voyage of the *Mountain Chief* in 1888:

R., 1447, line
46.

Q. I am talking about whether you are certain you hunted after the 3d of September?

A. We went out through the Pass, but we hunted to the last. We left the sealing ground on the 3d of September in the sea, and went and filled water, and we lowered and sealed after we filled water and come out, the same day we come out or the day before.

Q. You practically abandoned your hunting then on the 3d of September?

A. Out in the sea, I suppose. We come and filled water and then we hunted after that.

Q. You lowered in the Pass.

A. Yes; lowered inside the Pass.

This is the only sealing schooner that hunted in Bering Sea into September of the year 1888.

R., 1119, line
63.

The *Juanita* was in Bering Sea in the year 1888, and terminated her voyage August 20.

The general testimony relating to the close of the sealing season fixing it as between the 20th and 25th of August, and the convincing character of that testi-

mony is sufficient to outweigh the vague testimony of these two owners given in their own behalf.

The *Juanita* was built in 1875. Her gross tonnage was 40.21. R., 1337, line 68.

The fact that the *Juanita* entered Bering Sea on the 2d day of July and carried on, without interruption, her hunting operations until the 31st of July, taking in the meantime 619 seal skins for which, even at the extortionate value of \$11 per skin, \$6,842 is claimed, when compared with the claim made for 2,102 skins, which would have been taken during the balance of the season, and for which \$23,122 is claimed, is convincing evidence of the injustice of making use of a calculation of the prospective catch of seals as a basis for estimating the damages suffered by these vessels whose voyages were interrupted.

The demand for \$23,122 for the use of a vessel of 40 tons for a period of from twenty to twenty-five days is too grossly extortionate to be considered by a tribunal of justice.

The vessel was worth about \$2,000, and that she could earn over five and one-half times her value within twenty or twenty-five days, and at the rate of over \$250,000 a year, is so impossible that justice will not permit of the use of any such basis for estimating the future earnings of this vessel.

This vessel is entitled to recover from the Government of the United States her charter value from the 31st day of July to the 20th or 25th of August, measured by the rule of law stated in the Argument relative to the measure of damages in cases of partial loss, in addition to the value of 619 seal skins at the market price obtaining at Victoria at the time the skins would have been offered for sale.

THE PATHFINDER.

CLAIM No. 14.

R., 767, lines 12, 1, 28; R., 1503, line 58. The *Pathfinder* entered Bering Sea for a sealing voyage on the 1st day of July, 1889. She carried five hunting boats, and a crew of nineteen or twenty white men. The United States revenue cutter *Richard Rush* seized the *Pathfinder* on the 29th day of

R., 1504, line 3. July, at 11 o'clock in the morning. The seizing officer directed the removal to the cutter of 855 seal skins, 7 shotguns, 4 Winchester rifles, and some ammunition of practically no value.

R., 1505, lines 40, 47. William Munsie testified that the guns originally cost \$55 each, and the rifles \$26 each.

Argument on behalf of Great Britain, p. 47; R., 1571, line 44. In the argument on behalf of Great Britain this statement is made:

In the case of the *Pathfinder*, the schooner was owned by and registered in the name of a British subject, but one Bechtel, who was a native-born citizen of the United States, had purchased a half interest in the profits of the sealing voyages of the vessel.

The United States accepts the admission, made on behalf of Great Britain, that Andrew J. Bechtel was equally interested with William Munsie in the venture of the *Pathfinder* in the year 1889, but assert that Andrew J. Bechtel was also an owner of one-half of the vessel, resting this claim upon the testimony of William Munsie.

R., 1556, line 57. The transaction pertaining to the *Pathfinder* was in all its detail exactly the counterpart of the transaction between Munsie and Bechtel with reference to the *Carolena*, and at another place in this argument

the business relations existing between these two men has been discussed at length, and a repetition for the purpose of the claim of the *Pathfinder* is deemed unnecessary.

The claim of the *Pathfinder* being entirely for the value of seal skins actually taken, and for the use of the vessel between the time that she was seized in Bering Sea and the close of the sealing season, no claim being made for the vessel itself, even if Bechtel was not a half owner of the bottom of the ship, his interest is an equal one with William Munsie, and he is a half owner of the claim against the Government of the United States.

In this case, as in all other cases wherein an American citizen is interested as a claimant, the position of the Government of the United States is that no citizen owing allegiance to it can recover damages before this High Commission for any injury sustained by that citizen while violating the sovereign rights and the municipal laws of his own country.

William Munsie, testifying in his own behalf, stated:

Q. But you did not give any instructions to your captain R., 1505, line 16.
as to how long she would stay there?

A. I did not; I left it to his own discretion to stay as long as he could while the weather permitted.

And on cross-examination this witness said:

Q. Did the *Pathfinder* ever seal in the Bering Sea in the R., 1551, line 48.
month of September prior to the year when she was warned or seized?

A. I do not know.

Q. By your direct testimony, when you referred to October, R., 1553, line 57.
do you mean to be understood that there were any instructions, or contemplation of any, at the time of the outfit of the *Pathfinder* that she was to remain or seal in the sea in October?

A. No, sir.

Q. Or that she was to remain or seal in the sea in September?

A. No; it was left to the discretion of the captain.

R., 1554, line
10.

Q. Did that include in your contemplation sealing beyond the 1st of September?

A. No; I would [not] say that it contemplated sealing beyond that time. It contemplated sealing as long as he could remain in the sea for weather and provisions. You will understand that we usually put provisions on board in case they met with bad weather coming home. They are not going to starve.

This testimony bears upon all the testimony adduced on behalf of Great Britain of a similar nature. When a witness is questioned as to the time that he outfitted a boat to re- in Bering Sea, the answer sustains about the s- relation to the length of the sealing season in Bering Sea as an answer given to a question relative to the number of seals that a captain believed he was going to take in the Bering Sea bears to the actual catch that would have been made.

The testimony of this witness established the fact that to Captain O'Leary was intrusted the decision as to when the *Pathfinder* should discontinue her hunting voyage in the Bering Sea.

Captain O'Leary was examined on behalf of the claimant:

R., 773, line
44.

Q. In 1889 for what time did you outfit?

A. Until about the 1st of September. I generally allowed to leave Bering Sea about the 1st of September or the last of August.

Q. Did you ever fit out for a later season in Bering Sea?

A. Not at that time.

Cross-examined relative to a voyage in the year 1890, he said:

R., 770, line
35.

Q. What time did you leave that year?

A. I left there some time toward the end of August.

Q. The fact is that that season you hunted in the sea about the usual time?

A. Yes.

Q. How late in August did you leave?

A. About the 25th of August, as far as I can remember.

Q. You never were in there later than the 25th of August?

A. I do not think so. That was the last year I was in the Bering Sea.

Q. That was the latest time you were ever in Bering Sea—the 25th of August?

A. Yes; toward the last days of August somewhere.

This witness testified that it took five or six days for the *Pathfinder* to reach Unimak Pass after she began her homeward voyage on the 29th day of July. Taking these five or six days from the 1st day of September, when the witness testified that he had calculated to leave the sea in 1889, and the date of the termination of the hunting operations of the *Pathfinder* is fixed at August 25.

The *Pathfinder* was constructed in 1879, and the registered tonnage is 66.02.

The damage claimed is for the value of 854 seal skins, the guns seized, and the charter value of the *Pathfinder* from the 28th day of July until the close of the sealing season in Bering Sea. The value of 50 seal skins, taken after the seizure, should be deducted.

There is no evidence in the record to justify the claim for "time and expense of owner, \$200," and no testimony is cited from the record in the Argument on behalf of Great Britain. The claim for "legal expenses, \$250," rests upon the same basis as the claim for Belyea's fees in all the cases.

William Munsie testified regarding the nature of his agreement with Belyea.

This vessel commenced hunting in the sea the 1st day of July, and continued without interruption until the morning of the 29th of July, when she had taken 855 seal skins, making her average catch during that time 30½ skins per day.

In the Argument filed on behalf of Great Britain, a claim is made for 2,024 skins which would have been taken during the balance of the sealing season, which would make, extending the season even to the 25th of August, an average catch of over 67 skins per day.

on sealing beyond

templated sealing
ing as long as he
provisions. You
visions on board in
me. They are not

the testimony
a similar nature.
the time that he
Sea, the answer
the length of the
answer given to a
als that a captain
Bering Sea bears
een made.
ublished the fact
d the decision as
nue her hunting

n behalf of the

generally allowed
tember or the last

on in Bering Sea?

age in the year

d of August.
unted in the sea

I can remember.
e 25th of August!
year I was in the

R., 768, line
22.

Ex. 99, G. B.
claim No.
14; Exhib-
its, p. 274.

R., 768, line 1.

R., 139, line
45.

Without relying upon the fact that the law of both great nations, and the decisions of international tribunals, clearly establish that no damages can be awarded for prospective catch or profits, and without reference to the contingencies which exist to modify the catch of seals, this calculation clearly reveals the extortionate nature of the demands of these claimants.

the law of both international tri-
amages can be
its, and without
exist to modify
arly reveals the
these claimants.

THE BLACK DIAMOND AND THE LILY.

CLAIMS NOS. 15 AND 16.

The *Black Diamond* entered Bering Sea July 6, 1889. She was outfitted with ten canoes. Sealing operations were commenced on the 10th day of July. The steamship *Richard Rush*, in the service of the United States, seized the vessel on the 11th day of July, about 12 o'clock. Seventy-six seal skins, one rifle, and the spears of the Indians were taken aboard the cutter, landed at Sitka, proceeded against by the Government of the United States, and condemned.

The claim is one of partial loss. The measure of damages is the charter value of the ship from the 11th day of July to the 20th or 25th of August, measured by the rule of law stated in another part of this Argument, and the value of the skins seized.

The value of the skins taken after the seizure should be deducted from the charter value.

In estimating the charter value of a vessel outfitted for a sealing voyage in Bering Sea, consideration must undoubtedly be given to the fact that provisions were on board to sustain the crew and hunters during the period. The *Black Diamond* was provided with Indian hunters, and the cost of sustaining an Indian for one month is \$5. There were 20 Indians aboard and the captain and mate. Provisions were landed at Clayoquot, where Alexander Frank conducted a trading station. The value of the provisions removed is not stated, but what remained were utilized for another trip.

R., 1767, lines
42, 38, 43.

R., 1767, line
55; R., 1768,
line 35; Ex.
113. G. R.;
Claim No.
15.

Exhibits, pp.
381; R.,
1769, line
19.

R., 1768, lines
44, 50.

R., 463, line
25; R., 865,
line 14.
R., 1780, line
29.

R., 1781, line
35.

R., 1828, line 43. The *Lily* entered Bering Sea, July 25, 1889. She was seized by the United States revenue cutter *Richard Rush* on the 6th day of August. Three hundred and thirty-three skins and the hunting spears were taken by the cutter. The crew consisted of the captain, mate, 3 white men, and 25 Indians.

R., 1816, line 69. The case of the claimant was submitted on the affidavit of Morris Moss, "*the duly registered owner*," and John Reilly, her captain.

R., 1817, line 15. The *Lily* was ordered to proceed to Sitka. Her captain instead sailed for Victoria, arriving at that port on the 1st day of September, 1889. There is no evidence of any catch of seals made by the *Lily* after her seizure.

This claim is also one of partial loss, and the claim is for charter value of the vessel from the 6th day of August, 1889, to the close of the sealing season, August 20 to August 25, beside the value of 333 seal skins and the spears of the Indians.

The claim made "for illegal boarding, search, and arrest of vessel, \$2,000," and the similar claim made in the case of the *Black Diamond*, can not be allowed. The allowance of any damages in the nature of punitive damages against a Government acting in entire good faith has been discussed at length in another part of the Argument. The items, "Belyea's bill, \$250," "personal expenses and trouble of owner, \$200," in these cases, are absolutely unsupported by evidence. There was no testimony of a contingent contract, even, with Mr. Belyea regarding either claim, and no evidence was adduced tending to show that the owner or his agent gave any time or expended any money in connection with either claim.

The United States assert that Alexander Frank, a citizen of the United States of America, and a resident of the city of San Francisco, was the owner of the *Black Diamond* and the *Lily* at the time of their seiz-

ure. Hig-
Mo-
yea-
ent-
The-
con-
Gro-
own-
Gro-
S-
of l-
we-
clai-
the-
the-
need-
Tri-
gra-
ish-
the-
Vic-
in t-
fro-
on-
rea-
ing-
ers-
of-
Br-
wh-
bel-
ves-

ure. Hig-
Mo-
yea-
ent-
The-
con-
Gro-
own-
Gro-
S-
of l-
we-
clai-
the-
the-
need-
Tri-
gra-
ish-
the-
Vic-
in t-
fro-
on-
rea-
ing-
ers-
of-
Br-
wh-
bel-
ves-

5, 1889. She
revenue cutter
Three hun-
hunting spears
consisted of the
dians.

mitted on the
registered owner,"

o Sitka. Her
living at that
There is no
the *Lily* after

and the claim
the 6th day of
ing season, Au-
e of 333 seal

ing, search, and
ar claim made
not be allowed.
ature of puni-
cting in entire
th in another
Belyea's bill,
ole of owner,
r unsupported
ny of a con-
rea regarding
eed tending to
e any time or
a either claim.
nder Frank, a
and a resident
owner of the
of their seiz-

ure, and that no damages can be awarded him by this
High Commission.

These claims are presented in the name of Morris
Moss, "*the registered owner.*" Morris Moss died some
years ago. No representative of his estate was pres-
ent at Victoria as a claimant before the Commission.
The probate proceedings of his estate at Victoria<sup>R., 2001, line
53.</sup>

Counsel for the United States requested counsel for<sup>R., 1806, line
34.</sup>
Great Britain to state whom they claimed to be the
owner of the *Black Diamond*, and the counsel for
Great Britain replied:

So far as we are concerned, we find this vessel at the time
of her seizure registered in the name of Morris Moss, and
we claim for her whoever may be entitled to her; we are
claiming on behalf of Great Britain, and we have proof that
the vessel was registered in the name of Morris Moss.

The affidavit of Morris Moss, made as a basis for<sup>R., 1815, line
44.</sup>
the claim of the *Lily*, and his affidavit filed in con-
nection with the claim of the *Black Diamond* before the
Tribunal of Arbitration at Paris, contained in para-
graph 1 of each affidavit the statement. "I am a Brit-
ish subject by birth, and the *duly registered owner* of
the schooner *Lily (Black Diamond)* of the port of
Victoria aforesaid."

Alexander Frank was the only witness examined
in these two claims, and he was called by telegram^{R., 1903.}
from San Francisco, where he resides, and examined
on the last day of the session at Victoria.

The testimony of this witness is brief, and a careful
reading thereof in connection with the exhibits relat-
ing to these claims will satisfy the High Commission-
ers that he was the owner of these vessels at the time
of the seizure, and the person the counsel for Great
Britain had in mind when stating "we claim for her
whoever may be entitled to her; we are claiming on
behalf of Great Britain, and we have proof that the
vessel was *registered* in the name of Morris Moss."

Ex. 80, G. B.; Exhibits, p. 197. Ex. 112, G. B.; Exhibits, p. 376. The ships' registers disclose that Morris Moss was the registered owner. No other evidence was offered. The bill of sale, if any such bill of sale ever existed, is not in evidence. The register is only prima facie evidence of ownership.

The question of the ownership of the *Black Diamond* and the *Lily* will be considered at the same time. The facts that establish Alexander Frank's ownership of one equally demonstrate his ownership of the other.

In the year 1887 Alexander Frank and one Jacob Gutman were partners in business in the city of Victoria, owning three trading stations on the west coast of Vancouver Island, and operating three schooners in the sealing business—the *Active*, *Alfred Adams*, and the *Black Diamond*.

Ex. No. 10, U. S. claim No. 8, p. 211 of Exhibits; Ex. No. 10, U. S. claim No. 8, Exhibits, p. 207, line 51. Jacob Gutman died about the 1st of April, 1887. On the 7th of November, 1888, letters of administration of his estate were issued to Alexander Frank, who, as administrator, made and filed affidavits relating to the administration of the estate, all of which are contained in Exhibit No. 10, United States claim No. 8, pages 207 to 214, inclusive.

The United States contend that on cross-examination Frank was shown to be entirely unworthy of belief, and his testimony on direct examination can have no weight before this High Commission.

R., 1996, line 43. Q. You did own at one time a half interest in the *Lily*, and you did own at one time a half interest in the *Black Diamond*, did you not?

A. I did not own them; I claimed to own an interest in them.

Q. By that you mean that you were not the registered owner?

A. I claimed to own an interest in them to protest my interest when I found that the firm was insolvent. There was nobody to dispute my right in them.

Q. I asked you if they were partnership property when you were in partnership with Jacob Gutman?

A. They were not.

Q. And you and Gutman never jointly owned the *Lily* and the *Black Diamond*?

Morris Moss was
ence was offered.
sale ever existed,
only prima facie

the *Black Dia-*
at the same time.
Frank's ownership
ship of the other.
k and one Jacob
the city of Vic-
on the west coast
three schooners
Alfred Adams, and

t of April, 1887.
rs of administra-
Alexander Frank,
l affidavits relat-
ate, all of which
ted States claim

a cross-examina-
ly unworthy of
examination can
nmission.

est in the *Lily*, and
in the *Black Dia-*

own an interest in
not the registered

em to protect my
insolvent. There

ip property when
ant

y owned the *Lily*

A. He bought them.

Q. Now, answer the question, did you or did you not?

A. I tell you we never owned them jointly. It was after
his death when I claimed them, having found out that he
was lost, to protect my interest.

The name of the *Alfred Adams* was not changed Exhibits,
to *Lily* until the 25th day of March, 1888. bottom p.
197.

The Argument in behalf of Great Britain admits
that Alexander Frank was equally interested in the
venture of the *Alfred Adams* at the time of her seiz-
ure in 1887, and the evidence upon which that admis-
sion is made is the affidavit of Moritz Gutman, the Exhibits,
sole heir of Jacob Gutman, that the *Alfred Adams* p. 214, line
was owned by the said firm of Gutman & Frank. 21.

On the 1st day of November, 1887, Frank made Exhibits,
an affidavit (found at page 210 of exhibits, line 50), 40.
stating:

1. That for two years and upward one Jacob Gutman
had, until the date of his supposed death, hereinafter men-
tioned, been in partnership with me in a trade or business
carried on by us at Johnson street, in the said city of Vic-
toria, trading in the name or style of Gutman & Frank, as
merchants and Indian traders.

2. That in the course of our said business our said firm
possessed three schooners.

3. That in the month of February in the present year the
said Jacob Gutman sailed from the port of Victoria, British
Columbia, aforesaid, in one of our said schooners, known by
the name of the *Black Diamond*.

He also made an affidavit on the 21st of October, Exhibits, p.
1888, in which this statement was made: 207, line 46.

That the said Jacob Gutman was, at the time of his de-
cease, a partner with me in a business carried on by us in the
city of Victoria, as merchants and Indian traders, and that
the estate of the said Jacob Gutman consists of one-half
interest in the property of such partnership. That the account
hereunto annexed, marked A, is a true account of the assets
and liabilities of the estate of said Jacob Gutman, deceased.

The first two items in the schedule marked A are Exhibits, p.
as follows: 208, line 32.

The deceased is entitled to one-half interest in the follow.

ing properties: British schooner *Black Diamond*, British schooner *Lily*.

The testimony of Frank, where he stated, "I told you we never owned them jointly; it was after his death when I claimed them," has been cited, but these affidavits, made to be filed in the records of the probate proceedings of the estate of Jacob Gutman, and not made for the purpose of saving to himself claims aggregating over \$70,000, clearly establish the fact that at that time, uninfluenced by the temptation of gain, this witness swore that he owned one-half of the *Black Diamond* and one-half of the *Lily*; for he says that Jacob Gutman was in partnership with him, and that the estate of Jacob Gutman consisted in a one-half interest in the property of such partnership. He, being the only other partner, consequently owned the other half of these schooners; and he distinctly says in the affidavit, quoted from exhibits, page 210, "That in the course of our said business *our said firm* possessed three schooners."

Compare these affidavits with the statement cited from the Record: "I did not own them; I claimed to own an interest in them," and the fact will stand out prominently that this witness is not worthy of credence, and that his testimony is to be given no weight.

An opportunity was afforded the witness on cross-examination to explain these affidavits.

R., 1998, line 61. Q. At the time, you swore you owned one-half of these vessels?

A. I did not swear I owned one-half of them; I swore that he owned a half. I claimed the other half.

Q. And at the same time you were making that affidavit you knew that Jacob Gutman owned all of them?

A. I claimed the other half to protect my interest; to get some of the money I had to pay out.

Referring to the affidavit which he did make, and which has been quoted, this witness is shown to have positively sworn that Jacob Gutman owned one-half of the schooners *Black Diamond* and *Lily*, and that

he, the other partner in the firm of Gutman & Frank, owned the other half. He set up no claim in the affidavits that he was entitled to one-half the vessels as a creditor, and in fact the statement of liabilities shows that he was not a creditor.

The witness was further cross-examined:

Q. Did you swear to the court that Jacob Gutman owned half of the ship when you knew that he owned it all? R., 1999, line 1.

A. That is what I did.

Q. Did you do that to deceive the court?

A. I did not.

Q. Did you tell the court that you claimed half of these ships as a creditor or as an owner?

A. I did not.

Here the witness himself admits making a false affidavit, but in order to protect his interests at the present time.

One Moritz Gutman, the only heir of Jacob Gutman, swore that Gutman & Frank owned the *Alfred Adams*. He either swore to the truth, or he swore to what Alexander Frank had told him, and if Frank did not own the half interest in the *Alfred Adams* he defrauded this heir, and is defrauding him to-day, because the claim of the *Alfred Adams*, No. 8, is presented to this High Commission in the name of Gutman & Frank.

When asked as to whether the statements in the affidavits were true or not, the witness replied that he supposed his lawyer would look out to see that he swore to the truth. R., 1999, line 3.

He was asked if he would testify that Morris Moss owned the claim of the *Black Diamond* against the Government of the United States, and replied, "Well, no; I will not swear that," and then stated, "Morris Moss is dead, you will recollect." He was asked if the estate of Morris Moss owned the claim of the *Black Diamond* against the United States, and answered, "I will not swear to it." R., 1999, lines 61, 62, 63

Exhibits, p.
213, line 31.

Moritz Gutman, a brother of said deceased Jacob Gutman, was, upon his attaining his majority, appointed administrator in the place of Alexander Frank. He was the only heir of the deceased, and made an affidavit on the 9th day of November, 1888, in which is contained this statement:

Exhibits, p.
213.

That the said Jacob Gutman, at the time of his decease, was a partner in the firm of Gutman & Frank, of the city of Victoria aforesaid, merchants and Indian traders, and that the only estate, property, and effects of the said Jacob Gutman in the Province of British Columbia consists of a moiety, half part, share or interest in assets of the said firm of Gutman & Frank, and that the said estate of the said Jacob Gutman, deceased, is liable to a moiety of the liabilities of the said partnership firm of Gutman & Frank; that the account hereunto annexed, marked "A," is a true account of the assets and liabilities of the said partnership firm of Gutman & Frank; that the values of the following personal property, schooner *Black Diamond*, \$1,500; schooner *Lily*, \$1,500, etc.

Exhibits, p.
214, line 21.

And in the same affidavit he swore:

That the said firm of Gutman & Frank have a claim against the Government of the United States of America for the amount of \$20,433, such claim being for the seizure of a certain schooner known by the name of the *Alfred Adams*, and owned by the said firm of Gutman & Frank, and of certain seal skins belonging to said firm, and that proceedings have been commenced and are now being prosecuted for the recovery of said damages.

The schedule marked A, referred to in the affidavit of Moritz Gutman, states: "The following is a list of the assets of the firm of Gutman & Frank, and in which the above-named deceased owned one-half interest: Schooner *Black Diamond*, \$1,500; schooner *Lily*, \$1,500," etc., naming other property.

This affidavit of Moritz Gutman that Gutman & Frank owned the *Alfred Adams* is false, or the testimony of Alexander Frank that he never owned the ship jointly with Jacob Gutman is false.

Exhibits, p.
213, line 33.

Moritz Gutman, as administrator, made an affidavit on the 9th day of November, 1888, in which he stated

ceased Jacob Gutman, appointed executor of the estate of Alexander Frank. He was a merchant, and made an affidavit in 1888, in which

he stated that, at the time of his decease, Alexander Frank was a partner in the said firm, and that the said Jacob Gutman consists of a partnership of the said firm, the estate of the said firm, and the liability of the said firm, and that the said Jacob Gutman is a true and correct account of the said partnership, and of the following assets: \$1,500; schooner

the said firm have a claim against the estate of Alexander Frank, and of certain proceedings prosecuted for the

in the affidavit of Alexander Frank, and in the said one-half of the said schooner, and of the said property.

that Gutman & Frank, or the testator, owned the said property.

made an affidavit in which he stated

that he had received an offer from Alexander Frank "for the purchase of the interest of said Jacob Gutman, deceased, in the assets of the said firm (excepting thereout the said claim of \$20,433 against the United States authorities), the consideration offered by the said Alexander Frank for such purchase being the assumption by the said Alexander Frank of all the liabilities of the said firm." And in the same affidavit he stated "that such account shows an excess of the liabilities over the assets to the amount of \$899.57."

Attached to this affidavit is a statement of the assets of said estate, including the *Black Diamond* and *Lily*, and of the liabilities thereof. Subtracting the assets, \$17,323.29, from the liabilities, \$18,222.86, the balance is \$899.57.

This affidavit is in effect a petition to the Supreme Court of British Columbia in probate, praying for leave to transfer all the assets of the estate of Jacob Gutman, including the *Black Diamond* and *Lily*, and which are set out in said petition by name, to Alexander Frank in consideration of his assuming all the liabilities of the deceased, the liabilities exceeding the assets by the sum of \$899.57. The only asset to be excluded from the transfer was the claim of the *Alfred Adams* against the Government of the United States.

A bill of sale of all the assets of Jacob Gutman, deceased (excepting always the claim of the *Alfred Adams* against the United States), conveying in these terms: "The said Moritz Gutman doth hereby grant, assign, and convey unto and for the use of said Alexander Frank, his heirs, executors, administrators, and assigns, all the estate, right, title, and interest of him, the said Moritz Gutman, as the administrator of the estate and effects of the said Jacob Gutman in and to all and singular the property in the first schedule hereto contained of what nature soever," was exe-

Ex. 214, line 41.

Ex., p. 399,
line 39.

Exhibits, p.
399, line
29.

Exhibits.
pp. 212, 213.

cuted on the 8th of November, 1888, and filed with the register-general at Victoria on the 9th of November.

Contained in that bill of sale is the following statement: "And whereas it is estimated that the liabilities of the said partnership exceed the assets thereof by the sum of \$899.57."

In the original schedule from which this balance of \$899.57 was obtained, viz, the schedule filed in the probate court, the *Black Diamond* and the *Lily* are by name set out and inventoried at the sum of \$1,500 each, and the total sum of \$3,000 is required to make the assets of the partnership inventory at the sum of \$17,323.29. It will be further observed that the liabilities, as stated in that schedule, are \$18,222.86, and that the balance is \$899.57, the same amounts stated as the balance and the total liabilities in the bill of sale from Moritz Gutman to Alexander Frank, dated November 8, and filed the 9th day of November. Accordingly, when the transfer was made from Moritz Gutman to Alexander Frank, the schooner *Black Diamond* and the schooner *Lily* were necessarily included, and Alexander Frank therefore became, on the 8th of November, the owner of the schooner *Black Diamond* and the owner of the schooner *Lily*.

This is the only bill of sale in evidence of a transfer of the *Lily* and *Black Diamond*. It is a bill of sale to be recorded with the register-general, and therefore does not by name set out the *Lily* and *Black Diamond*, but the amounts show conclusively that the two ships were included in the transfer.

The law does not require a ship to be registered in order to be transferred. The registry gives certain privileges to a ship; but the ownership as disclosed by the register is not conclusive. One person may own a ship and have her registered in the name of another. At the time of this transfer Alexander Frank was an American citizen and could not obtain the registry of the two vessels in his name.

3, and filed with
th of November.
following state-
that the liabili-
the assets thereof

h this balance of
tute filed in the
d the *Lily* are by
n of \$1,500 each,
red to make the
at the sum of
ed that the liabil-
222.86, and that
ounts stated as
s in the bill of
er Frank, dated
r of November.
made from Moritz
poner *Black Dia-*
ssarily included,
ne, on the 8th of
r *Black Diamond*

ence of a trans-
It is a bill of
ter-general, and
e *Lily* and *Black*
nclusively that
ansfer.

be registered in
ry gives certain
ship as disclosed
ne person may
in the name of
Alexander Frank
not obtain the
e.

Moritz Gutman testified: "I left Victoria some time R., 1365, line
in 1888, and Alexander Frank continued the business, 29.
and of course kept the books;" and that he was absent
four years from Victoria. Frank did not desire, there-
fore, to leave the ships registered in the name of the
estate of Jacob Gutman, because Moritz Gutman, the
administrator, was leaving the city for a period of
four years. Frank accordingly made use of the name
of Morris Moss for the purpose of having the ship
registered.

The ships were registered in the name of Morris
Moss on the 10th day of November, 1888. That
Moritz Gutman had no title to the *Lily* and *Black*
Diamond at that time is shown by the bill of sale
dated November 8, 1888, which transferred these
vessels to Alexander Frank. The only evidence of
the ownership of Morris Moss is the entry on the
register. This entry is not sufficient to outweigh the
bill of sale, introduced in evidence, from Moritz Gut-
man to Alexander Frank; and at the time of its con-
veyance the probate court had never authorized Moritz
Gutman to make such conveyance.

On the 14th day of November, 1888, the transfer
having been made on the 8th day of November, and
the bill of sale recorded on the 9th day of November,
Moritz Gutman filed in the Supreme Court of British R., 1859, line
Columbia, in probate, his affidavit, dated November 44.
9, 1888: a hearing was had and the following order
entered:

Upon hearing an application on behalf of Moritz Gutman, R., 1859, line
the administrator of the estate of Jacob Gutman, deceased, 50.
and upon reading the affidavit of the said Moritz Gutman,
filed herein on the 14th day of November, 1888, I do order that
the said Moritz Gutman, the said administrator, be at lib-
erty to sell, convey, assign, and otherwise assure to Alex-
ander Frank, of the city of Victoria, in the Province of
British Columbia, all the real and personal estate and effects
of the above-named Jacob Gutman, deceased, of the Province
of British Columbia (excepting thereout the claim of the *Alfred*
Adams against the Government of the United States).

That in consideration of the conveyance, assignment, or other assurance to be made under this order, the said Alexander Frank do assume and pay all the debts and liabilities of the said firm of Gutman & Frank, which debts and liabilities are particularly set out in an exhibit marked A, annexed to the said affidavit of the said Moritz Gutman, and therein appear to amount to the sum of \$18,222.86, and that the said Alexander Frank do enter into security to the amount of \$18,222.86 to indemnify the estate and effects of the said Jacob Gutman, deceased, from the payment of any of the debts and liabilities of the said firm, such security to be to the satisfaction of and approved by the registrar of this court.

Had Morris Moss purchased the *Black Diamond* and *Lily*, he would not have consented to Moritz Gutman transferring the title to Alexander Frank on the 8th day of November. Moreover, it would have been a simple procedure to have filed with the probate court a petition praying for leave to sell the vessels to Morris Moss; but no such petition ever was filed, and no such sale ever authorized.

The only conclusion is that Morris Moss's name was used simply for the purpose of effecting a transfer on the register. Morris Moss was engaged in the business of representing purchasers of seal skins at the port of Victoria, and was also engaged in the business of outfitting vessels as agent for other parties.

The High Commissioners are advised that it is not an uncommon practice at Victoria for ships, entirely or partly owned by American citizens, to be registered in the name of subjects of Great Britain. Charles Spring swore in the affidavits filed at Paris that he was the sole owner of the *Onward* and the *Favourite*, and the testimony in this Record discloses that Alexander McLean, an American citizen, owned one-half of each of those vessels. William Munsie made no reference in the affidavit filed at Paris to the interest of Bechtel in his ship, although it is now admitted that Bechtel was equally interested in the venture of the *Pathfinder* in the years 1889 and 1890. Theodore Lubbe testified

R., 1948, line 32.

R., 1229, line 60.

R., 1231, line 26.

R., 1234, line 10.

ce, assignment, or
er, the said Alex-
ebts and liabilities
which debts and lia-
bit marked A, an-
oritz Gutman, and
18,222.86, and that
urity to the amount
effects of the said
ent of any of the
h security to be to
e registrar of this

ack Diamond and
Moritz Gutman
Frank on the 8th
ould have been a
the probate court
vessels to Morris
iled, and no such

Moss's name was
ing a transfer on
ged in the busi-
seal skins at the
d in the business
er parties.

sed that it is not
ships, entirely or
o be registered in

Charles Spring
at he was the sole
ite, and the testi-
xander McLean,
of each of those
reference in the
of Bechtel in his
hat Bechtel was
the *Pathfinder* in
Lubbe testified

that although he was an American citizen, he was at one time a part owner of the *Favourite* and the *Onward*; and Moritz Gutman swore that Alexander Frank was the half owner of the *Alfred Adams*, although the ship was registered in the name of Jacob Gutman. Patrick Hickey testified that he was half owner of the *Carolina* when she was registered in the name of Donald Urquhart.

Bearing upon the ownership of Alexander Frank, R., 1780, line 24. Captain Thomas, in charge of the *Black Diamond* on this voyage, testified that he took provisions off at Alexander Frank's trading station upon his return from Bering Sea; and this witness further testified that Alexander Frank was aboard the *Black Diamond* at the time she left Victoria for her voyage to Bering Sea in the year 1889, and made the trip to the west coast of Vancouver Island.

The *Black Diamond* made a trip to Frank's fishing station on Queen Charlottes Islands after leaving Bering Sea in the year 1889, and was there loaded with a cargo belonging to Frank. R., 1781, line 38.

Although the *Alfred Adams* was registered in the name of Jacob Gutman, Alexander Frank held a mortgage. This mortgage was not discharged of record at the time of the death of Jacob Gutman, but stood against the boat which was known as the *Lily* during the time of the proceedings had in the estate of Jacob Gutman. Exhibits, 207, line 32. Exhibits, No. 80, G. B., claim No. 8; register *Alfred Adams*, p. 197.

An inspection of a statement of the liabilities of said deceased Jacob Gutman discloses that the mortgage to Alexander Frank was not scheduled among the debts of the estate, showing that the mortgage merely represented Frank's half interest as an owner, and was not considered a debt of Jacob Gutman, deceased. Exhibits, p. 208.

Collector Milne, in reporting as to the owners of vessels sealing from the port of Victoria, stated that "A. Frank was the owner of *Black Diamond*," and "A. Frank was owner of *Lily*." R., 1819, lines 40, 64.

R., 1819, line
60.

This table, prepared by Collector Milne, shows on its face that it was a table prepared with reference to the ownership of vessels, and not the registered owners, because in one instance it is stated that the owners of the *Aurora* were not known. Of course the vessel must have been registered in the name of some person: and again in the table it is stated that Indians owned certain vessels and certain commercial companies owned others, although the register would contain no reference to Indians or unincorporated companies.

The United States contend that the testimony adduced establishes beyond controversy that Alexander Frank was the owner of the *Black Diamond* and the *Lily* at the time of their seizure in 1889, and that no damages can be awarded the owner of these vessels.

line, shows on its reference to the registered owners, at the owners of the vessel, the vessel of some period that Indians commercial companies would contain the testimony of that Alexander Diamond and a 1889, and that of these vessels.

THE MINNIE.

CLAIM No. 17.

The *Minnie* entered Bering Sea June 27, 1889, R., 1437, line 13. carrying eight canoes, two boats, one of which would be a stern boat, and a crew of 16 Indians and 5 white men, including captain and mate. She continued her hunting from the 27th of June until the 15th day of July, at 4.30 o'clock in the afternoon, when she was seized by the United States revenue cutter *Richard R.*, 1436, line 67. *Rush*, commanded by Captain Shepard. The boarding officer directed the removal of 418 skins, one breech-loading shotgun, one muzzle-loading shotgun, R., 1450, line 40. and eleven spears to the *Richard Rush*. R., 1450, line 60.

The schooner was ordered to proceed to Sitka. The instructions were not obeyed, and "that night made some new spears and next morning commenced hunting as though nothing had happened; we captured 50 seals on that day and 90 on the next. Kept on hunting until the 17th of August, when, having 500 seals on board, I left for the south. After passing through Unimak Pass I told the prize crew I should steer for Victoria. He replied, 'I always thought so.' The Indians told me that if the United States sailor attempted to take the vessel to Sitka they would throw him overboard. We arrived in Victoria last evening, and to-day at noon the prize crew came ashore and reported at the American consulate."

Affidavit of Victor Jacobsen, the owner of the *Minnie*, made at Victoria, 2d day of Sept., 1889. R., 1451, line 50.

The owner, Victor Jacobsen, was captain on the voyage, and testified:

Q. Did you make as many new spears as the old ones that had been taken away from you? R., 1445, line 32.

A. No; I didn't make as many, but I made as many as were needed.

Q. You made some of those spears the night of the day you were seized, did you not?

A. Yes, the very same night, and the rest in the morning.

Q. *And the next morning you commenced sealing as though nothing had happened?*

A. *That is what we did.*

Theodore Magesen, mate of the vessel at the time of the seizure, on direct examination, testified:

R., 1437, line 37. Q. After being ordered out had you any conversation with the master of your vessel as to what you would do?

A. Yes; we talked the matter over, and we came to the conclusion that we wasn't going out of Bering Sea unless we were towed out.

R., 1437, line 43. This witness says: "That in the evening of the day of the seizure, the vessel proceeded to the northward," and then corrects the statement "to the northeast;" and makes a further statement:

R., 1438, line 5. Q. On the day following, where did you proceed?

A. Went up to the northward; it dropped calm, and they lowered the next morning, and they went out with their guns. Captain Jacobsen was fixing up spears for them while they were out. The Indians wasn't out very long. They came back again; they couldn't find any seals, and they wasn't much use to the shotguns.

He then states that after they were ordered out they steered up to the northeast, probably 20 miles, lowered the next day, and got a few seals, "I can't remember how many, probably 18 or 20."

R., 1438, line 3. Magesen also states that prior to the date of the seizure the hunters made the largest catch of the voyage, and places the number at 74. Jacobsen, on the

R., 1451, line 50. contrary, says that the day after the seizure the hunters took 50 seals and 90 on the next day.

R., 1441, line 29. Captain Jacobsen stated that he had no log of the voyage to produce, and, notwithstanding the fact that he secured better results after the warning than before, endeavors to establish that he left the "best sealing grounds."

R., 1443, line 12. Q. And in the meantime (after the seizure and before leaving the sea) you sealed?

ght of the day you
st in the morning,
sealing as though

A. Yes; up to a few days before we came out we sealed
night along.

But he says the seals were scattering and few up ^{R., 1444, line}
there. 8.

(On cross-examination the witness testified:

ssel at the time
testified:

Q. And the next morning you commenced sealing as though
nothing had happened?

conversation with
ould do?

A. That is what we did.

we came to the
ing Sea unless we

Q. How many seals did you take the day after you were
seized?

evening of the

A. Oh, I don't remember that for certain.

d to the north-
"to the north-

Q. About how many?

proceed?

A. I suppose 40 or 50; maybe not 50; between 30 and 50,
anyhow.

d calm, and they
t out with their
rs for them while
ery long. They
seals, and they

His attention was then called to the affidavit printed
in the American Reprint of the Paris Proceedings,
vol. 5, p. 360, and he was asked if he made an affi-
davit containing the statement, "I then concluded I
would not go to Sitka, but would continue my voy-
age. That night we made some new spears, and next
morning commenced hunting as though nothing had
happened. We captured 50 seals that day, and 90 on
the next." He answered that he supposed he did make ^{R., 1445, line}
it, and that he supposed it was correct. 50.

e ordered out
ably 20 miles,
seals, "I can't
20."

This affidavit bears date September 2, 1889, and ^{R., 1451.}
was prepared immediately after his return from Bering
Sea.

ne date of the
ch of the voy-
cobsen, on the
ure the hunters

The testimony of Captain Jacobsen, bearing upon
the change of position of his ship after the seizure,
has little weight when the original affidavit made by
him on the 2d day of September, 1889, contains no
mention of the fact that he had abandoned the seal-
ing grounds or changed his position, but on the con- ^{R., 1451.}
trary states that the next morning he commenced to
hunt "as though nothing had happened."

no log of the
g the fact that
g than before,
"best sealing

The affidavit filed by this claimant at Paris con-
tains this statement:

nd before leav-

An hour or so after the *Rush* went away the man left in
charge showed me his written instructions from Captain
Shepard, of the *Richard Rush*. As nearly as I can remem- <sup>Vol. 4, p. 204,
American
Reprint
Proceed-</sup>

ings of Tribunal of Arbitration at Paris. ber the directions, he was to deliver the *Minnie* to the United States authorities at Sitka, and place her captain, myself, and mate under arrest. *I at once made up my mind to stay where I was and catch what seals I could.* Next morning I made new spears for the Indians and sent them out sealing. I remained in the sea up to the 16th of August following, and in that time got 486 seals and 8 sea otters. I did not see any thing of the *Rush* after the 15th of July.

Had Captain Jacobsen at that time conceived the idea of making claim on the ground that he changed his position, reference would have been made to the fact in that affidavit: and in commenting on the *Richard Rush* not having appeared after the 15th of July, it would be reasonable to suppose that he would have said that he went off to an unoccupied and unused portion of Bering Sea, and therefore avoided the *Richard Rush*, and not have stated "I at once made up my mind to *stay where I was and catch what seals I could.*"

A comparison of the catch made by the *Minnie* between the 27th day of June, when she entered the sea, and the 15th day of July, the day upon which she was warned, with the catch made between the 15th day of July and the 17th day of August, the day she left the sea, shows that the hunters took more seals per day after she left these "best sealing grounds" than she did when she was occupying them.

R., 1441, line 24.

Captain Jacobsen testified that when he entered Bering Sea he had 150 skins aboard the ship, and there were 418 seized by the cutter on the 15th of July, making the catch between the 27th of June and the 15th of July, 268, which, being divided by the number of days occupied in making the catch, viz, 18, gives a daily catch of nearly 15.

R., 1446, line 12.

After the seizure, and up to the time of leaving the sea, the *Minnie* took 488 skins, and hunted thirty-two days, making her average catch over 15 seals a day.

Assuredly, when the effect of leaving "the best sealing grounds" is to produce better results than when occupying these grounds, the claimants would

nie to the United
captain, myself,
my mind to stay
Next morning I
them out sealing.
August following,
ters. I did not
July.

he conceived the
that he changed
en made to the
ng on the *Rich-*
e 15th of July,
he would have
ed and unused
oided the *Rich-*
ee made up my
t seals I could."
by the *Minnie*
she entered the
ay upon which
e between the
of August, the
nters took more
aling grounds"
them.

en he entered
the ship, and
on the 15th of
27th of June
ing divided by
ing the catch,
15.

me of leaving
hunted thirty-
over 15 seals a

ing "the best
r results than
aimants would

not appear to be in a position to base a claim for damages upon the fact that a change of position was made.

The captain testified:

Q. For what season did you outfit the schooner?

R., 1440, line

A. I intended to stay to the middle of September; from the 10th to the middle, in Bering Sea. I stayed there the year before in a small schooner, and in this schooner I was not scared of the wind and weather.

66.

But on cross-examination he testified that he prac-

tically abandoned sealing in the year 1888, on the 3d of September; and testifying further:

R., 1447, line
53.

Q. You left the sea on the 25th of August, 1890?

R., 1448, line
61.

A. 23d I think; we quit sealing on the 23d; we were some two or three days getting out.

The only explanation he makes for leaving on that date is that he thought he had seals enough and had made money enough.

Bearing upon the extortionate claim for \$33,187, on account of damages suffered by reason of the interruption of the voyage, the testimony of Jacobson, who owned the *Minnie* in the year 1891, and who was, on the 15th day of July, in the year 1891, warned from the Bering Sea in accordance with the terms of the modus vivendi of that year, is worthy of note.

Chart No.
6, Vol. 3
American
Reprint,
giving date
of warning
in 1891.

The British Government sent commissioners to Victoria to pay the sealers for the losses incurred by reason of being deprived of hunting in the sea in the year 1891, and this witness received from the Government of Great Britain the sum of \$8,000 for damages suffered by two schooners.

R., 1447, line
10.

No testimony is found in the record to base the claim for "time and expense of owner, \$200," upon.

The Government of the United States is liable for the charter value of the *Minnie* from the 17th day of August to the 20th or 25th of August, and for the value of 418 seal skins, 2 guns, and the spears of the Indians.

THE TRIUMPH.

CLAIM No. 18.

R., 1418, line
10.

The only witness who had a personal knowledge of the occurrences in Bering Sea relating to the warning of the *Triumph* was Capt. Daniel McLean. His affidavit, made on the 8th day of August, 1889, at Victoria, was read into the Record.

He states that he entered Bering Sea on the 4th day of July, 1889; was boarded by an officer of the United States revenue cutter *Richard Rush* on the 11th day of July, who told him that if he should again board the vessel and find sealskins he would seize and confiscate the vessel and catch. On account of this warning the affiant states that he terminated his voyage and returned to the port of Victoria.

No property was taken by the cutter, and her only claim, beside the usual items for "illegal boarding, legal expenses, and expense of owner," is for prospective catch.

E. C. Baker, one of the owners of the *Triumph*, testified on direct examination regarding the instructions given to Captain McLean relative to the duration of the voyage:

R., 1420, line
44.

Q. Did you give him any instructions as to the time that he should stay in the sea?

A. Well, of course I am not really positive as to instructions. I was simply one of the partners managing the affairs of the schooner, and a good deal, necessarily, would be left to McLean's discretion, because it was he that got me to go into that venture. Naturally I would be guided by his report as to the circumstances when he was to return. But it was distinctly understood between him and myself that he would

remain there to the very last of the season that he could catch seals, so as to ascertain, if possible, how long that season really did and could last.

Q. Was there any understanding at all to that effect?

A. Yes; he was to remain there until late in September.

Q. That was fully understood?

A. Fully understood between him and me. In fact he wanted to know something about what became of the seals after they left the sea, including the Pribilof Islands. *He wanted to go on a little voyage of discovery to a certain extent, and trace them and probably do some sealing at the same time.*

Q. It was mentioned between you, or understood, that he could stay there until pretty late in September?

A. Oh, yes. The previous year he had come back [to Victoria] on the 10th of September, and he had everything on board that would enable him to stay there until the end of the year, for the matter of that.

Upon this testimony in the Argument for Great Britain a claim is made for a season extending to October 1.

If the testimony of an owner, who was never in Bering Sea, to the effect that he had instructed his captain, who was a man of long experience in the sealing business, to stay in the sea as late as possible, is to outweigh the positive statement of that captain that the sealing season terminated toward the last of August, the opinions of all thinking minds regarding the weight to be given testimony of this nature will be disregarded. Again, if the statement of a witness interested in the results, to the effect that he instructed his captain to go on "a little voyage of discovery" to trace, if possible, the seals when they left the Pribilof Islands to proceed on their southward journey, and "probably do some sealing at the same time," is to be taken as a basis of establishing the duration of the sealing voyage in Bering Sea, against the testimony so clearly establishing the termination of the sealing season between the 20th and 25th of August, there would have been little need of examining to such great length so many witnesses concerning the general subject of the ordinary period during which seal-

ing operations could be continued with profit in Bering Sea.

Capt. Daniel McLean, to whom was intrusted the determination of the duration of the voyage, according to the testimony of Baker himself, who said, "I would be guided by his report as to the circumstances when he was to return;" when questioned as to how long hunting could be continued, stated in an affidavit, made in 1892:

R., 1821, line
45.

Bering Sea hunting season: I usually enter the Bering Sea during the fore part of July and leave the last of August. The sea becomes too rough to make it profitable to hunt seal after August, and it is the practice for nearly all vessels engaged in hunting seal to leave about that time. A few sometimes remain later for the purpose of trying to raid the Islands, but there are so few days that the sea is smooth enough to hunt after September 1 that it does not pay to remain any longer.

R., 702, line
30.

Captain McLean was master of the *Triumph* on a voyage in 1888, and the detailed catch of the vessel, which was testified to by Baker, shows that the last day the *Triumph* hunted in that year was the 20th of August, and that the boats were not lowered between that day and the 14th of August.

This information, taken directly from the books of Captain McLean, together with his statement that the sealing season closes about the last of August, conclusively shows that the *hunting* voyage of the *Triumph* would have terminated at the usual time, and that in determining her charter value, no reason is found in the evidence for extending the period during which she would have hunted beyond the ordinary limit, fixed as between the 20th and 25th of August.

R., 1452, line
40.

R., 1431, line
24.

The managing owner of the *Triumph* had contracted to sell to H. Liebes & Co., of San Francisco, the catch of the vessel for the year 1889, at \$6.25 for each skin delivered, and sold the catch made on the voyage to Bering Sea at that figure.

If there were any conditions attached to the con-

with profit in
s intrusted the
voyage, accord-
f, who said, "I
e circumstances
oned as to how
ed in an affida-

enter the Bering
he last of August,
table to hunt seal
nearly all vessels
that time. A few
trying to raid the
the sea is smooth
t does not pay to

e *Triumph* on a
h of the vessel,
ws that the last
was the 20th of
owered between

om the books of
tatement that the
of August, con-
age of the *Tri-*
usual time, and
e, no reason is
e period during
ed the ordinary
25th of August.
had contracted
Francisco, the
9, at \$6.25 for
h made on the

ned to the con-

tract of H. Liebes & Co., they were in a position to perform their part of the contract, and absolutely did have a vessel at Sand Point to receive the catch of *the Triumph* made on the voyage to Bering Sea. R., 1431, line 16.

In the claim for the prospective catch of the *Triumph*, which the United States maintains can not be allowed in any event, the value placed on each skin is \$11.

There is no testimony in the Record upon which to base the items, "legal and other expenses, \$250," and "time and expense of owner, \$200;" and no testimony is cited in the Argument on behalf of Great Britain.

The statement of the money expended for the voyage of the *Triumph* and of the advances made to the crew is qualified by the testimony, showing that the *Triumph* hunted along the coast on her voyage to Bering Sea and returned to Victoria the 322 seal skins taken. R., 1431, line 13.

The hunters had not been settled with for this catch, and the amount finally paid is not separated with reference to whether the money was paid for services performed on the voyage to Bering Sea or for services in Bering Sea and upon the return voyage. Certainly the amount paid to hunters was paid for skins taken and delivered to the owners, and has no reference to the claim presented to this Commission. R., 1427, line 20.

The owners of the *Triumph* would be entitled to recover her charter value for the period between the 11th day of July and the 20th or 25th of August, estimated on the basis stated in the portion of this Argument relating to the measure of damages for the vessels warned out of Bering Sea and whose voyages were therefore interrupted, if a citizen of the United States had not been interested in the voyage.

The United States contends that Daniel McLean, who was the owner of twenty-two shares, or one- R., 1417, line 70.

third, of the *Triumph* can be awarded no sum for damages.

Ex. No. 12, U. S. claim No. 18; Exhibits, p. 269. McLean became a naturalized citizen of the United States of America on the 5th day of October, 1882.

R., 1947, line 40. Without obtaining the consent of the United States, and the United States not having consented to his throwing off allegiance to their Government, McLean, on the 16th day of October, 1886, made application for and received papers declaring him to be a naturalized subject of Great Britain.

R., 1821, line 50. On the 7th day of September, 1892, he made an affidavit that he was a naturalized American citizen.

The laws of the United States, the decision of its courts, and the established law of nations bearing upon the citizenship of McLean, and his right to recover damages for an act committed in violation of the sovereign rights of the Government of the United States and the municipal law of the country to which it is claimed he owed allegiance, have been heretofore discussed at length and the position of the United States defined.

T
Ber
Pass
Islan
July
she
canc
whit
U
tain
At
office
inqu
came
They
woul
Blac
othe
retur
the
our
leav
T
with
tifie
ever
of
per
R
rev

ed no sum for

n of the United
October, 1882.

e United States,

nsented to his

ment, McLean,

ade application

to be a natural-

2, he made an
merican citizen.

decision of its

ations bearing

l his right to

in violation of

t of the United

untry to which

been heretofore

of the United

THE ARIEL.

CLAIM No. 19.

The *Ariel*, a vessel of 90.95 registered tons, entered R., 1459, line 42.
Bering Sea on the 12th day of July through Unimak R., 1461, lines 30, 41.
Pass, proceeded to the south and west of the Pribilof R., 1480, line 28.
Islands; hunted until 6 o'clock of the morning of R., 1460, lines 36, 26.
July 30, having secured at that time 346 sealskins.
She carried 6 boats, 1 canoe for Indian hunters, a
canoe to be used as a stern boat, and a crew of 22
whites, 2 Indians, and a cook.

Under date the 30th day of July the book of Cap-
tain Bucknam contains this entry, made at the time:

At 6 a. m. American cutter *Rush* came alongside and sent R., 1462, line 42.
officers on board to examine and search the vessel; made
inquiries as to the number of crew on board; what time we
came into Bering Sea; and the number of sealskins on board.
They also told us if caught with fresh skins on board we
would be seized. Also reported having seized schooners
Black Diamond, *Pathfinder*, and *Minnie*, and having searched
other schooners in the sea. At 9 a. m. all boats out, and
returned with 120 skins. Badly scared through the day, as
the cutter appeared at one time to be returning to us, and
our boats had got far away, contrary to their orders when
leaving the vessel.

This entry discloses that the *Ariel* lowered her boats
within three hours after she was warned, and, as tes-
tified by Captain Bucknam, the boats were lowered R., 1463, line 8, et seq.
every day thereafter up to and including the morning
of the 18th of August, when the weather would
permit.

From the time of the warning by the United States
revenue-cutter, up to and including the 17th of

August, the hunters of the *Ariel* had taken 485 seals, an average of 26 per day. From the 12th day of July until the 30th, a period of eighteen days, 346 seals had been taken by the hunters, an average of 19 seals per day.

Captain Bucknam, one of the owners of the vessel and a witness in his own behalf, was asked on cross-examination:

R., 1468, line 64. Q. *Did you not seal every day between the 30th day of July and the 20th day of August?*

A. *I believe we did.*

Q. Every time you could lower your boats you had them out, did you not?

A. I do not believe I could say that.

Q. Could you not? Then I will refresh your recollection. Did you testify here once before that every day you could lower your boats you did lower them?

A. I don't know if I did. I don't remember about it. I can only say what we were doing by looking through this diary; this is correct.

Q. You had that diary when you were on the stand before, did you not?

A. Well, any statement I make from this diary is correct.

Q. *Will you answer the question? Did you lower your boats every day that you could?*

A. *I think we did.*

Q. And your claim now is that you went off the sealing grounds, is it?

A. That is our claim; from where I knew it was good sealing grounds.

The owners of this vessel, notwithstanding the number of seals taken after the warning given by the cutter averaged 26 per day, while the number taken before averaged but 19 per day; and notwithstanding the testimony of the captain that he lowered his boats every day that they could be lowered, and hunted for seals between the 30th of July and the day that he left the sea, ask from the Government of the United States damages which they claimed to have suffered by reason of having partially obeyed the warning and left the locality which the captain,

R., 1472, line 44.

who had never been in Bering Sea, "*knew* was good sealing grounds."

The testimony abundantly shows the fact that the *Ariel* continued her sealing voyage until the 18th day of August as though no warning had been given, upon which day the captain entered in his book:

Have now decided to leave the sea at once, as it is quite clear that many seizures will be made this season; perhaps all the vessels that remain in the sea. R., 1464, line 54.

The United States deny all liability for any damages alleged to have accrued prior to the 18th day of August, and confidently rely upon the testimony of the claimants themselves to establish their position that no heed was given the warning until the 18th day of August; and no damages were sustained prior to that day, for the captain says that he lowered his boats every sealing day up to and including the morning of the 18th. R., 1469, line 10.

The memorandum or log produced did not contain a record of the latitude and longitude of the ship from the 1st day until the 21st day of August. R., 1470, line 30.

Q. And from the 1st day of August until the 21st day of August you have not entered your latitude and longitude?

A. I think not.

The only testimony bearing upon the position of the ship after the warning is that from the position of latitude $56^{\circ} 36'$, longitude $172^{\circ} 01\frac{1}{4}'$, occupied when warned, the vessel moved to latitude $55^{\circ} 05'$, longitude $169^{\circ} 55'$ on the 1st day of August. The log states that a hunting boat with its hunters was lost upon that day. From that time until the entry of August 19, no entry is made showing the position occupied by the vessel. However, the captain testified that he from that position held generally in the direction of Bogoslof Volcano until the 5th of August, at which time an entry was made in the log that the vessel was making in the direction of Bogos- R., 1463, line 1. R., 1463, line 15. R., 1464, line 68. R., 1463, line 45.

R., 1444.

lof. After August 5 there is no course recorded in the memorandum; but the entries show that the vessel was sealing constantly, and make reference from time to time to the search after the hunting boat, showing that the vessel must have remained in the vicinity of the position occupied August 1, the day upon which the boat was lost.

On the 15th of August the seals appear to have been so plentiful that the captain made this note in his book: "Many seals seen during the day from the vessel."

Argument on
behalf of
Great Brit-
ain, p. 63,
line 40; p.
60, line 20.

The course from $55^{\circ} 05'$, $169^{\circ} 55'$ southeast toward Bogoslof, which was the course of the vessel from the 5th of August to the 18th, when the decision was made to leave the sea, and during which time the boats were lowered every day that hunting was possible, is directly over the ground covered by Captain Miner, who is cited as sustaining the position of the claimants as to the location of the "best sealing grounds;" directly over the ground covered by the *Mary Ellen* in 1886, claimed in the Argument on behalf of Great Britain as having occupied the "best sealing grounds;" directly over the ground hunted by the *Theresa* in 1886, which vessel, it is stated in the Argument on behalf of Great Britain, occupied the "best sealing grounds;" and is directly over that portion of the Bering Sea which the other claimants assert to be the area habitually resorted to by all sealers and well known of all men engaged in the business.

Id., p. 60, line
10 et seq.

Locate on a chart the position occupied by the *Ariel* on the 1st of August— $169^{\circ} 55'$. It is due south of the Pribilof Islands. If the Argument on behalf of Great Britain attempts to establish any fact it is that this locality is the "best sealing ground" in Bering Sea.

At page 63 of the Argument Captain Raynor is

se recorded in
w that the ves-
reference from
hunting boat,
remained in the
ust 1, the day

ppear to have
de this note in
e day from the

utheast toward
e vessel from
e decision was
hich time the
nting was pos-
e position of the
"best sealing
covered by the
gument on be-
ied the "best
round hunted
it is stated in
tain, occupied
ctly over that
ther claimants
ted to by all
gaged in the

d by the *Ariel*
due south of
t on behalf of
fact it is that
d" in Bering

in Raynor is

cited as a captain who sealed on the "best sealing grounds," and at line 26 his location is stated as about 170° west longitude and 55° north latitude. But when Captain Bucknam was occupying the position 169° 55' and 55° 05', which is almost identically the same location in Bering Sea, the grounds suddenly become poor sealing grounds.

Referring to one of the so-called migration charts, this statement is made in the Argument at page 59, line 1:

It sufficiently indicates, as well as the migration chart first referred to, the comparatively limited space between the pass of the Aleutian Islands and the Pribilof group in which seals are found.

Captain Bucknam testified:

Q. You were nearer the line running from the Pribilof Islands to Unimak Pass after you had been warned than you were on the day on which you were warned? R., 1470, line 60.

A. Yes; it would be nearer.

Q. Now, you have told about hearing where the good sealing was down at Victoria before you went up there. Did you hear that the sealing grounds were between Unimak Pass and the Pribilof Islands?

A. No; I heard they used to be there, but the seals had changed up to the west.

The position assumed by the claimants who did not heed the warnings given by the revenue cutters of the United States, but on the contrary continued their voyages practically until the close of the season, is that although there are localities in the Bering Sea which are known as the "best sealing grounds," these grounds were never occupied by *their* ships, even when the location, by latitude and longitude, corresponds exactly with the location of these so-called "sealing grounds."

The High Commissioners are asked to find for one claimant that his vessel was seized and her operations arrested while hunting in the most desirable place in all the vast expanse of water forming Bering Sea,

perchance the claim be one of total loss; and to find for another claimant that *his* vessel, although hunting over the same area, after the unheeded warning, left the desirable sealing grounds.

The testimony of Captain Bucknam is entitled to no weight; on the Record he has convicted himself of the willful intention to deceive as to the voyage of the *Ariel*, and his claim should be considered as an attempt to mulct damages from the Government of the United States for the interruption of her voyage from the 30th of July, when in fact she continued her hunting operations until the 18th day of August, and be treated with accordingly.

This witness was called first, not on his own behalf, but as a witness for the purpose of giving testimony on the general subject of the catch.

R., 703, line
41.

Q. You were in the *Ariel*?

A. Yes.

Q. When did you go into the sea?

A. I don't know the date. It was about the 10th of July.

Q. And how long did you stay in the sea?

A. Came out about the 30th of July, I think.

Q. I want to know the date you went out; how long did you fish there?

A. *I don't know the date. The ship's books are lost, and the log book also.*

His direct examination closed after the information of his total catch was elicited.

The witness had not been called in the claim of the *Ariel*, but the first question asked him on cross-examination was:

R., 704, line
20.

Q. You did not state that you went out during the month of July, did you?

A. I said I was ordered out on the 30th of July.

The question was insisted upon and the witness answered "No."

The cross-examination of the witness continued at considerable length, and he was forced to make the admission that he had made an affidavit stating that

R., 706, line
45.

he had left the sea on the 21st of August; and finally was asked:

Q. Have you any record of your Bering Sea catch in 1889, R., 708, line 20.
such as you showed me for the year 1890?

A. No; I haven't.

Q. Have you the log of the *Ariel* for the year 1889?

A. No; I have a kind of rough diary.

Q. Where is that?

He then requested his memorandum book to be given him.

The witness was recalled some weeks later and testified, on his own behalf, with reference to the claim of the *Ariel*, directly from the memorandum which he produced when on the stand before, after being pressed on cross-examination, and read therefrom the entry under date of July 30. R., 1459, line 40. R., 1462, line 43.

Q. You had seen this memorandum just a few days before you took the stand on the 23d of December, had you not? R., 1468, line 40.

A. I had it in my possession.

Q. And you had looked at it, and talked with counsel about it, had you not?

A. You mean the day I appeared here?

Q. Yes.

A. The counsel had it at that time.

Q. But you had talked with them about it, had you not?

A. I had spoken with them.

Q. But you knew what time you left Bering Sea when you were on the stand before?

A. I could not tell without the diary.

Q. Did you not know that you had that diary when you took the stand first?

A. I knew that counsel had it.

Refer to the testimony of the witness on the 23d day of December, where he said:

Q. And how long did you stay in the sea?

A. Came out about the 30th of July, I think. R., 703, line 44.

Q. I want to know the date you went out? How long did you fish there?

A. I don't know the date. The ship's books are lost, and the log book also.

But little weight will be given to the testimony of this witness regarding the movements of his ship after the date of the warning. He made the deliberate attempt to establish that his ship left the sea the 30th of July, and it was not until forced by the cross-examination to surrender his memorandum that he did so, after having stated that he was unable to fix the date because the books were lost.

This same witness endeavored to establish the fact that he intended to seal in Bering Sea in the month of October.

Q. For what time did you outfit the vessel?

R., 1159, line
68.

A. To make a long season. We intended to try October sealing in the Bering Sea, and we fitted out for a long season.

Q. To remain until October in the Bering Sea?

A. Yes, sir.

On cross-examination he testified:

R., 1472, line
36.

Q. Who gave you information there was good sealing up there in October?

A. My mate said he had been spoken to by a whaler and one of my hunters, and we had heard that people of the islands thought that October was a good month to be there.

Q. Had you ever, before you went there in 1889, heard a sealer say he had been up there sealing in October?

A. No.

Q. Can you give me the name of a vessel, before 1889, that was in Bering Sea in September?

A. I was not acquainted with the business before 1889; that was my first year.

Such testimony given by this witness will not, it is apprehended, be made the basis for extending the time for which the hunting voyage would have continued beyond the ordinary limits fixed by the general testimony on that subject.

In the Argument on behalf of Great Britain, treating specifically this claim, the statement is made that the mate, Smith, corroborated the testimony of the captain "that it was his intention to try the October

sealing," and the Record (p. 1484, line 58) is cited in support of that statement.

The testimony of the witness, Smith, there given, is:

Q. What understanding was there?

R., 1484, line 58.

A. On several occasions we met on board the schooner—that is, the hunters and myself met the captain and asked him to fit the vessel well out, as she was at that time one of the largest vessels out of Victoria Harbor, a staunch vessel, and we had all made up our minds to make as long a season as possible on previous reports.

Q. Was there any month mentioned, or any time mentioned, which you desired to remain in Bering Sea?

A. Well, I believe that I was one of the parties that persuaded the captain to provision the vessel up until October, anyway.

Q. What do you mean by "up until October?"

A. To allow us, if the weather permitted us, and if the reports were true with regard to seals being found that month in the Bering Sea, that we would be able to stay.

This witness was in the Bering Sea in 1890, on the *Katharine*, and if he desired to try his unheard-of experiment of October sealing, it might reasonably be expected to be found that the voyage of that vessel was continued until October, but the witness testified on cross-examination:

Q. What time did you come out of the sea in 1890?

R., 1486, line 40.

A. 31st of August.

And he gave no explanation as to the reason, although on redirect examination an attempt was made to ascertain why he left the sea at that time.

From four to five days are required to make the voyage from the location where the vessel chances to be hunting to one of the passes; therefore this witness himself, having the opportunity to continue his sealing voyage until October, left the sealing grounds at about the 26th of August.

No property was taken from the *Ariel*, and the Government of the United States claims that this vessel should be awarded the minimum of damages, if any sum whatever, because of the dishonest at-

tempt to make out an aggravated claim. However, should the High Commissioners decide, notwithstanding the false position taken by the captain and part owner of the vessel, to award damages for the balance of the season, the owners would be entitled to demurrage from the 18th of August to the 20th or 25th of that month.

THE
1889
the 1
State
Sea,
carge
TH
on th
Au
from
p. m.
cloud
Or
log:
At
light
Wind
the n
Or
At
lib an
time
T
tain
Bl
light
(
sigh
lett

m. However,
notwithstand-
tain and part
es for the bal-
be entitled to
o the 20th or

THE KATE.

CLAIM No. 20.

The *Kate* entered Bering Sea on the 24th of July, R., 1377, line 1889, carrying eight canoes and Indian hunters. On the 13th day of August she was warned by the United States revenue cutter *Richard Rush* to leave Bering Sea, under threat of seizure. No part of the outfit or cargo was seized.

The warning to leave the sea was not obeyed; but on the 14th of August the mate entered in his log: R., 1378, line 25.

August 14.—This day begins with calm and heavy sea from westward. At 10 a. m. canoes out, and returned at 6 p. m.; calm. The remainder of the day wind westerly and cloudy; pumps light. R., 1378, line 45.

On the 15th of August this entry was made in the log:

At noon wind southerly, and hauling to the southeast; light breeze. At 6 a. m. canoes out, and returned at 4 p. m. Wind continued the same. Hove-to under foresail during the night. R., 1378, line 64.

On the 16th day the entry in the log reads:

At noon, southerly wind and thick fog; at 8 a. m. set the jib and double-reefed mainsail and beat to windward. Continued foggy the remainder of the day. R., 1379, line 12.

The entry in the log under date of August 17 contains this entry:

Blowing strong and heavy sea, and rain and fog, pumps light, lookout carefully attended to. R., 1379, line 33.

On the 18th of August the log shows that the vessel sighted Ugemok Island, which would indicate that she left Bering Sea through Unimak Pass on that day.

R., 1380, line 20. The hunters had made a total catch of 730 or 740 seals in Bering Sea, which were delivered to the owner.

From the 13th day of August, the day on which the vessel was warned, until the 18th, she lowered her canoes twice, hunting the full days. The entries in the log for the other intervening days showed that the weather would not permit of sealing.

R., 1382, line 41. The testimony of Alexander Reppen, the mate, shows that the *Kate* hunted every day between the day of the warning and the day of her leaving the sea that permitted of the boats being lowered.

Q. Now, wait a minute. The fact is, that between the 15th day of August and the 18th day of August, inclusive, it was so stormy that you could not lower a sealing boat, was it not?

A. No, sir.

Q. What do you mean by that; it was or was not?

A. You couldn't lower; it was strong and windy.

Q. So that if you had not been warned on the 13th, on the 16th, 17th, and 18th you could not have lowered your boats anyway, could you?

A. No, sir.

The sealing season in Bering Sea was practically closed, and the damage that this vessel sustained is very slight.

The witness Reppen, who was mate on the voyage, testified:

R., 1382, line 63. Q. You left Bering Sea that year about the time the nasty weather set in, did you not?

A. Yes, sir.

Q. And about the time that the westerly winds were beginning to be the prevailing winds—strong westerly winds. Is not that so?

A. Yes, sir; we were getting westerly winds all along.

R., 1383, line 42. Q. And you think that you came out in 1889 when pretty nasty weather was beginning?

A. Yes; some fine weather, too, before we went through the Pass; and then it started in nasty afterwards. Fine weather the day before the day we went to the Pass.

Q. It was not fine weather the day before you went to the Pass?

A. Two days before that.

Q. The 15th was the last fine day you had?

A. Yes.

Q. And you lowered your canoes on that day?

A. Yes.

The witness testified that he was in Bering Sea in the year 1888 on the *Pathfinder*, and was not warned; R., 1383, line 38.
 "came out the 15th of August, as near as I can remember;" that he was on the *Black Diamond* in 1887 R., 1383, line 61.
 and left Bering Sea "about the 15th of August, I think."

Captain Moss was asked regarding the time that he intended to stay in the sea:

Q. Now tell me, Captain, what were your instructions as R., 1387, line 51.
 to the time you should stay in the sea?

A. My instructions were to stay there as long as the weather would permit.

On cross-examination this witness was examined as to the time when he had left the sea in former years:

Q. What boat were you on in 1886?

A. On the *Favourite*.

Q. What time did you leave the sea?

A. About the 19th of August, I think.

Q. What boat were you on in 1887?

A. I was on the *Kate*.

Q. What time did you leave the Bering Sea?

A. Twentieth of August, or a little later; I don't remember as to a day or so.

Q. What boat were you on in 1888?

A. The *Favourite*.

Q. What day in August did you leave the sea in that year?

A. I do not remember what day it was; it was late in August.

The testimony of the captain and the mate certainly do not warrant the claim that this vessel would have staid in Bering Sea until the first of October; but in addition to the fact that the mate thought the bad weather had set in, and that it was the usual time for leaving the sea, according to his experience, and the usual time, according to the experience of the captain,

as testified to, the Record contains the positive statement of the owner of this vessel regarding the duration of the voyage, brought out on direct examination.

R., 1371, line
41.

Q. Did you give him (the captain) any instructions as to the time he was to stay in the sea?

A. He was to stay as long as he possibly could carry on his sealing.

Q. No more instructions beyond that?

A. Nothing more. I considered that he was well aware of the work he had to attend to.

Q. With regard to provisions, how long did you provision the boat for; what length of voyage?

A. About the middle of September, to reach here in Victoria.

No citation of testimony is necessary to prove that the time ordinarily consumed in making the voyage from Bering Sea to Victoria was in the neighborhood of fifteen to seventeen days, and that the average time consumed by a sealing schooner in stowing away her small boats and in preparing to leave the Bering Sea for her return voyage and in making the passage from the place in the sea where she chanced to be sealing to the Pass, was about five days.

Accordingly, on the statement of the owner himself, the voyage of the *Kate* would have ended the 25th of August, and she sealed constantly until the 17th.

Belyea's charges, \$250, depend upon the same contingent arrangement as all of these charges in the various claims.

There is no testimony cited from the Record upon which to base the claim for "time and expense of owner, \$200," and there is no such testimony.

R., 1394, line
45.

The *Kate* was built in 1862 and her registered tonnage is 58.11.

This vessel is entitled to recover from the Government of the United States demurrage, as in case of detention, from August 18 until the close of the seal-

the positive state-
 arding the dura-
 direct examina-

instructions as to
 bly could carry on

was well aware of

did you provision

reach here in Vic-

ary to prove that
 king the voyage
 he neighborhood
 hat the average
 ner in stowing
 ing to leave the
 d in making the
 ere she chanced
 five days.

the owner him-
 have ended the
 stantly until the

on the same con-
 arges in the vari-

the Record upon
 and expense of
 testimony.

er registered ton-

rom the Govern-
 ge, as in case of
 close of the seal-

ing season; that is, for a period variously estimated at
 from two to seven days.

The fact that the supplies aboard the vessel were
 taken off at the trading post of Charles Spring, the
 owner, on her return voyage to Victoria, should be
 taken into consideration; as should also the fact that
 at Kyuquot, and other places on the west coast of
 Vancouver Island, she was loaded with a cargo for
 transport to Victoria.

R., 1380, lines
 15, 52; R.,
 1381.

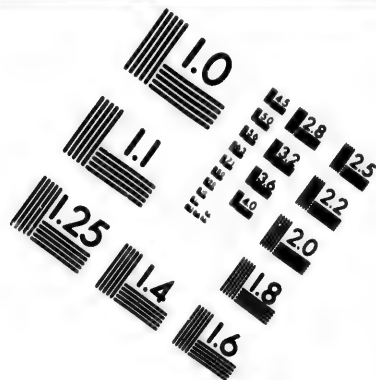
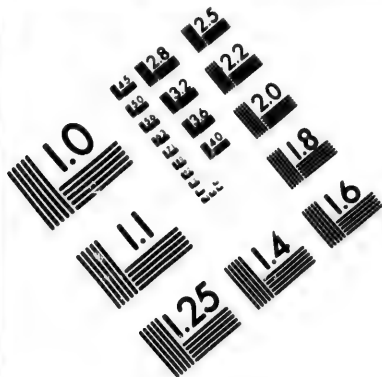
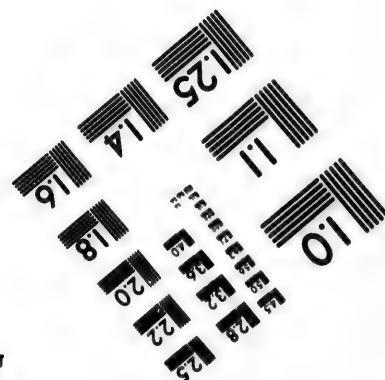
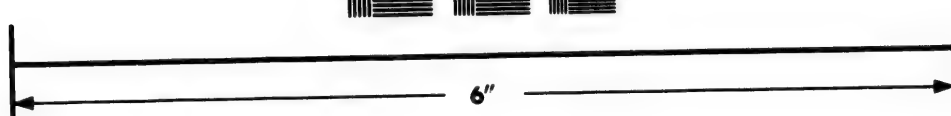
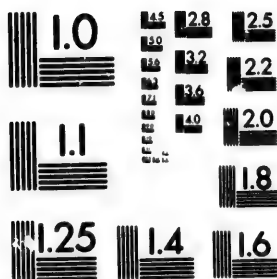


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



THE PATHFINDER.

CLAIM No. 21.

This claim arises from the seizure of the *Pathfinder* in Neah Bay, a harbor, in what was at that time Washington Territory, a part of the United States of America, on the 27th or 29th of March, 1890. The seizure was made by the commanding officer of the United States revenue cutter *Corwin* on the ground that the vessel had been seized in Bering Sea in the year 1889 for violation of the municipal laws of the United States and instructed to proceed to Sitka, there to be surrendered to the authorities; and that she had, contrary to instructions given her captain by the commanding officer of the United States cutter *Rush*, refused to surrender to the jurisdiction of the court of the United States in the Territory of Alaska, but instead proceeded to Victoria.

William Munsie and Frederick Carne, jr., citizens of Great Britain, owned one-half of the *Pathfinder*, and Andrew J. Bechtel, a citizen of the United States of America, owned one-half.

R., 1811, line
20.

The admission was made on behalf of Great Britain that the interest of Bechtel in the *Pathfinder* had remained unchanged from the time of her seizure in 1889, at which time he was a half owner in the venture.

The vessel was seized March 27, 1889, as shown by the findings of fact of the Tribunal of Arbitration convened at Paris, and in a footnote to the table found in Annex C to the Tribunal of Arbitration the

statement is made that she was released two days later.

Alexander Reppen, the mate, called as a witness on behalf of the claimants, was unable to fix with accuracy the date of the seizure, although he testified, "We started from Neah Bay at 6 o'clock in the morning and came to Port Townsend about 12 o'clock in the forenoon." R., 822, line 61.

The telegram sent by the commanding officer of the *Corwin* to the Secretary of the Treasury at Washington placed the date of the seizure as March 29. On that day he telegraphed the Secretary of the Treasury, Washington, from Port Townsend, as follows:

I found at Neah Bay, Washington, *to-day*, British schooner *Pathfinder*. Escaped from steamer *Rush* after seizure in Bering Sea last year. Have detained and brought her to this place and transferred to custody of collector of customs pending advice from Department. R., 1810, line 35.

Another telegram was sent on the same day to the Secretary of the Treasury by C. M. Bradshaw, collector of customs at Port Townsend.

Am detaining British schooner *Pathfinder*, awaiting instructions. Please advise.

George B. Tichenor, Assistant Secretary of the Treasury, replied to the telegram of the collector of customs at Port Townsend, under date March 29, 1890, as follows:

In the year 1887 the Department, in a case quite similar, R., 1810, line 59. but in some respects stronger for the Government, decided that the vessel could not be held. In view of that precedent, without now reviewing the principles upon which it proceeded, I direct the release of the *Pathfinder*.

The schooner was accordingly released, but instead of proceeding on her voyage, sailed across the Straits of Juan de Fuca to Victoria, where she was delayed a week undergoing repairs.

The seizure was not the cause of the *Pathfinder* proceeding to Victoria. If the vessel had returned to R., 823, line 20; 825, line 42.

Neah Bay after her release, she would have arrived there on the night of March 29, and the seizure would have resulted in her detention from the morning of the 29th of March to the night of the same day, or, according to the findings of the Paris Tribunal, in her detention for *three days*.

In the pleadings filed before this High Commission at Victoria, damages are claimed to the amount of \$2,000; but in the Argument the claim is made for \$3,700. This includes an item for damages for "illegal boarding, search, and arrest of the vessel, \$2,000."

A claim is also made for "personal and legal expenses, \$200."

There is no testimony in the Record of any expenditures made by the owners on account of the seizure and no testimony is referred to in the Argument on behalf of Great Britain.

If the vessel is entitled to any damages it is for demurrage for a period of one or three days.

R., 821.

Alexander Reppen, the mate, was the only witness called on behalf of the claimants to testify concerning the occurrences at the time of the seizure.

R., 822, line
8.

Q. Were you on deck when the seizure took place?

A. Yes, sir.

Q. Just as briefly as you can tell us, what was said and done by the officers?

A. The officer went to the cabin to examine the papers and he came on deck and the captain came on deck and told me that they had seized us.

Q. Your own captain?

A. Yes, sir.

Q. Well, go on.

A. The officer from the *Corwin* went on board the cutter and sent a crew of men with a towline on board, made fast to us, and towed us to Port Townsend.

Q. Was there any conversation that you heard take place—were there any orders or instructions given that you heard about heaving your anchor, or anything of that kind?

A. The same officer came on board again and told us to heave our anchor, and we were bound for Port Townsend.

Q. Was there any answer?

A. Answer to that? I went and told the men to heave up the anchor.

Q. Did you do that at once, or was there an answer before you did that?

A. Not any that I know of.

Q. You were instructed to heave your anchor, and you did?

A. Yes, sir.

Q. Then what did they do?

A. Then they towed us out of the harbor and took us to Port Townsend.

The Government of the United States asserts that this vessel was seized within the jurisdiction of the United States in good faith; that for the purpose of making an investigation she was towed to the nearest telegraph station, and there released as quickly as orders could be received from the executive department of the Government, and that no damages can be awarded her owners.

R., 1811, line
19.

The vessel, having been forced into Neah Bay under distress, had the right granted her by the law of nations to depart without interference; but in order that the claimants might be in a position to advance the claim of privilege, it was the duty of the officers of the *Pathfinder* to demand the privilege of the commander of the cutter *Corwin*, and to make known to him that the vessel had entered the jurisdictional waters of the United States in distress. This privilege was not claimed, and no such information was given to the commanding officer of the *Corwin*, as is clearly established by the testimony.

The owners, or their representative, not having asserted their rights at the time of the seizure, and the vessel having been seized by the persons representing the authority of the United States, in ignorance of the fact that the vessel had entered Neah Bay in distress, no damages can be awarded.

THE HENRIETTA.

CLAIM NO. 22.

- The *Henrietta* entered Bering Sea in September, 1892, in violation of the *modus vivendi*. On the 6th of September, Captain Hooper, commanding the United States revenue steamer *Corwin*, seized her. September 10, Commander Evans, commanding the United States naval force in Bering Sea, reported to the Secretary of the Navy that the *Henrietta* had been seized and that she would be taken to Sitka, there to be proceeded against on a charge of violating the revenue laws of the United States; at the same time reporting that he had made a declaration of seizure against the vessel for violation of the *modus vivendi*, and in case of failure to condemn the ship for violation of the revenue laws "she would be turned over to the British authorities at Victoria for trial under the *modus vivendi*."
- Mr. Foster, the United States Secretary of State, in a note dated February 10, 1893, advised Sir Julian Pauncefoot of the seizure of the *Henrietta*, and informed him that she had been delivered to the authorities of the United States at Sitka on a charge of violating the revenue laws, "and in case of failure to condemn her on a charge of violating the revenue laws, she was to be turned over to the British authorities at Victoria for a violation of the *modus vivendi*."
- The British ambassador, in a note bearing date February 15, 1893, requested that the *Henrietta* be delivered to the British authorities as provided in the Convention of 1892.

Mr. Foster replied, in a note dated February 21, 1893, that he had recommended to the Attorney-General of the United States that the *Henrietta* be delivered to the proper British authorities for trial under the *modus vivendi*. R., 1653, line 46.

The Department of State advised Sir Julian Pauncefote, under date of September 2, 1893, that the libel against the *Henrietta*, charging her with violation of the revenue laws of the United States, had been dismissed, adding: "*Is it the desire of your Government that she shall remain in charge of her captain, or that the United States shall send her to Victoria?*" R., 1658, line 18.

The British ambassador replied to this note as follows: R., 1659, line 1.

NEWPORT, September 20, 1893.

SIR: I did not fail to transmit to the Earl of Rosebery the inquiry which you addressed to me by telegram on the 2d instant, as to whether it is the desire of my Government that the *Henrietta* should remain in charge of her captain or that the United States should send her to Victoria. I have now the honor to inform you that in reply to the above inquiry, Lord Rosebery has instructed me to request that the *Henrietta* may be sent to Victoria under the exact terms of the *modus vivendi*, or be left in charge of her captain at the option of your Government.

On the 23d of October instructions were sent by the Department of Justice of the United States directing the United States marshal at Sitka "to notify the captain of the *Henrietta* that the vessel was released and subject to his absolute disposal;" and thereafter the Department of State addressed the following note to the British ambassador: R., 1659, line 41.

I have the honor to transmit herewith for the information of Her Majesty's Government, in connection with previous correspondence, a copy of a letter from the honorable the Attorney-General of the 18th instant, showing that the schooner *Henrietta*, with her boats, tackle, apparel, furniture, and cargo, was, on November 23, 1893, turned over to the captain of the vessel, who gave his receipt therefor. R., 1652, line 60.

R., 1664, line 13. Captain Pinckney, examined on behalf of the claimants, testified:

Q. When was she actually delivered to you?

A. I think it was the 23d of November, 1893.

The Government of the United States admits its liability for the detention of the *Henrietta* from the 6th day of September, 1892, until the 23d day of November, 1893.

R., 1663, line 8. Captain Pinckney, called on behalf of the claimants, said:

Q. Do you remember what time you arrived at Sitka?

A. I think it was the 20th of September.

Q. Did you remain with the schooner?

A. Well, I stopped on her a day, and then I went ashore.

Q. As far as you were concerned, you were not interfered with in that respect?

A. No, sir.

Q. How long did you remain in Sitka?

A. I think that I remained there two days.

Q. And then what happened?

A. Then I went to Victoria.

The statement is made in the Argument on behalf of Great Britain that when the master left Sitka the crew were in jail. The captain testified:

R., 1663, line 48.

Q. Was it in the jury room?

A. I do not know. It was not in the jury room. I think it was in the anteroom where the keeper stopped.

R., 1663, line 56. Q. Was it the first time you saw them there?

A. Yes, sir; I think they were put in that day to prevent them from going away on the steamer.

R., 1677, line 26. Caesar Doring, one of the crew of the *Henrietta*, testified on direct examination:

Q. After you arrived at Sitka were you detained there?

A. We were.

Q. How many of you?

A. Six of us.

Q. Were you put in the sheriff's office?

A. Yes, sir.

Q. For what length of time?

A. For about three hours, I should say.

Q. What for?

A. We had arranged for our passage in the *Coquitlam*. When she was ready to go the sheriff came on board and took us in there and kept us there.

Q. What did he tell you?

A. He told us that he would keep us there until the boat went away.

The master of the vessel left for Victoria two days after his arrival at Sitka, and thinks that it cost him about \$50 to go down. "About a dollar or two, I think, would cover my expenses at Sitka before leaving for Victoria."

R., 1663, lines
62, 63, 68;
R., 1664,
lines 3, 13.

He remained in Victoria until July, 1893, when he returned to Sitka, remaining there until the delivery of the vessel on the 23d day of November.

There is no testimony in the Record that Captain Pinckney was employed by the owners of the vessel, and there is the positive testimony that he was not paid for services during the time that the vessel was in the custody of the United States authorities. There is no testimony that he was not employed for other purposes at Victoria in the interim, but he asks the Government of the United States to pay \$600 for his board at Victoria, when he was not engaged in connection with the seizure of the *Henrietta* and might have been employed elsewhere.

Q. Did you pay for your board in Victoria? Did you incur any expense in Victoria in the meantime?

A. I think it cost me about \$600 from the time I got down until the time I arrived up here again?

Q. How would the \$600 be made up?

A. Well, board and lodging.

Q. Including your passage money?

A. No, sir; outside of the passage money.

The United States denies its liability for the support and maintenance of the captain of the *Henrietta* while he was at Victoria.

Captain Pinckney testified that the cost of returning to Sitka from Victoria was \$50, and that he incurred \$148 for personal expenses at Sitka before leaving with the *Henrietta* for Victoria.

R., 1664, lines
25, 58.

R., 1664, line 40. Testifying relative to the condition of the *Henrietta* when he took charge of her:

Q. In what condition was the vessel when you took charge of her?

A. Well, she was looking pretty well bleached. Her rigging had been lying on her, and the rain and frost put it in bad condition.

Q. Did you have her repaired before sailing?

A. No, sir; but I had to get a new foresail for her and a lot of running gear.

R., 1667, line 25. Q. In what condition was the vessel when you got her delivered back to you?

A. Well, she was a little wormed.

Q. To what extent?

A. Well, I can hardly tell to what extent. Just below the watermark there were a good many worm holes in her where the boat had chafed the paint off.

Q. Had she been taken care of in the meanwhile?

A. *Nothing more than the ship keeper on board.*

Q. Had she been copper painted?

A. No, sir; and her centerboard was badly damaged.

Q. How was it damaged?

A. Well, there was some of the iron strapping very bad. I found when I took charge of her that the chain that hauled the centerboard up was broken.

Q. Was it broken or damaged at the time of the seizure?

A. No, sir.

Q. And the gear was out of order?

A. The running gear was quite rotten.

Q. In what condition were the sails?

A. The principal sails were all right, but there was the main topmast staysail which had been left down in the hold, and was all mildewed and rotten.

R., 1670, line 63. On cross-examination the witness testified:

Q. The *Henrietta* had been lying there in the water at anchor?

A. Yes, sir.

Q. And as she lay there, she was not beached at all?

A. No, sir; when I took charge of her I put her on the beach to clean her bottom.

Q. In Sitka?

A. Yes, sir.

Q. And you found that she was pretty badly worm-eaten?

A. Well, yes, sir.

Q. Had you looked at her bottom that spring?

A. No, sir; not at her bottom.

of the *Henrietta*

en you took charge

leached. Her rig-
and frost put it in

illing?
esail for her and a

when you got her

t. Just below the
holes in her where

eanwhile?
board.

dly damaged.

rapping very bad.
chain that hauled

ne of the seizure?

but there was the
down in the hold,

estified:

e in the water at

ached at all?

I put her on the

badly worm-eaten?

pring?

Q. I mean the spring of 1892; had her bottom been examined?

A. No, sir; I did not look at her bottom, but I had her beached in Tonki Bay, and I looked at her bottom there.

Q. In the summer or fall of 1892?

A. Summer.

Q. Did you observe any worm holes in her then?

A. No, sir.

Q. Then it is true that in these waters there is danger from the worm?

A. Yes, sir.

Q. It is very well recognized as a very serious menace to ships, is it not?

A. Yes, sir; the Pacific Ocean is pretty bad for worms.

Q. Not any more in Bering Sea than it is about here, is it?

A. Not as I am aware of.

Q. Now, Captain, you have spoken about the injury to the centerboard and the main topmast staysail as mildewed. Now, in what other respect than you have related was the *Henrietta* injured?

A. Well, of course, the vessel lying up there in the rain and wet and frost and snow, generally the ironwork gets bad, and the decks get bleached, and rusts the ironwork.

Q. Well, what was the sail that was lost, mildewed, or injured, worth?

A. Well, I do not know exactly the cost when it was new, I am sure.

Q. Was it new the year when you sailed out of Victoria?

A. No, sir; I think not. It had been used a little, I think.

Q. About what was it worth?

A. Well, I could not tell. I do not know how many yards there were in it.

Q. And the centerboard; how much would it have taken to put that in repair?

A. Well, I should think it would have taken probably about \$15.

Q. Now, you had been out for the entire season of 1892, sailing in March, I think, did you not, for the coast catch?

A. Yes, sir.

Q. And you were seized about the 4th of September, and you were on your way home; you had had about your full season's voyage?

A. Yes, sir; I was working my way home.

Q. Now, the *Henrietta* had the wear and tear of that voyage at the time of the seizure?

A. Yes, sir.

Q. What do you think it would have taken at the time that you got possession of the vessel again to put her in as

good repair as she was when you finished the voyage in September, 1892?

A. That is, the hull?

Q. Yes; the ship. The centerboard fixed and the damage to the sail that was mildewed; put her in the same condition as she was when you started for home on the 6th of September, 1892?

A. Of course there was a good deal of wear and tear to her sails coming down.

Q. Yes, but what was the actual wear and tear to her sails during the voyage of 1892—the ordinary voyage? What would it have taken to have put her in as good a condition as she was in 1892 when you were about to leave the ship?

R., 1672, line 1. A. I should say about \$40; that is, to put repairs on her except the worms.

Q. How much, in round figures, do you think the injury to the vessel was, or what would it have cost to have put the vessel in as good repair altogether, captain?

A. I think probably about \$200; that is, the hull, unless the planks had been worn so bad that they had to be taken out; then it would cost more.

R., 1672, line 52. Q. When you examined the skins, to what extent were they injured, of the 300 or 400 that were in there?

A. Well, I do not know, but in my mind I think it would be about \$3, or something like that.

Q. Three dollars for what?

A. Three dollars per skin.

R., 1664, line 59. He says that the 420 seal skins seized were delivered back to him, but that they were damaged. He dis-

R., 1665, line 10. posed of 105 of the skins at Sitka. Eight guns and a rifle, taken from the vessel by the authorities, were

R., 1666, line 16. returned to him "more or less damaged." The Indians kept their canoes, and the boats were returned to the vessel "very much broken and the bottoms all eaten out with worms."

The Argument on behalf of Great Britain charges

Ex. 108, G. "Loss as shown by Exhibit 8, page 108, \$913.60."
B., Claim
22, Exhib-
its, p. 282. Examining this exhibit, it will appear that almost every article, with the exception of the provisions,

are articles that were undoubtedly returned to the vessel, such as compasses, saws, bits, knives, water casks, etc. In that exhibit the charge is made also

for "three boats, two of them new, \$230." The schedule in the Argument repeats the item enlarged, "Three boats, destroyed by worms, at \$85 each, ^{R., 1660, line 4.} \$245." The *Henrietta* carried but three boats.

The demands of this claimant are so grossly exorbitant, so absolutely without foundation in the Record, and so unusual that a detailed discussion of each item is considered unnecessary. The High Commissioners, upon inspecting the schedule, will find that the illustration of the double charge for the boats practically represents the method in which the entire schedule is made up. Two items for legal expenses, as follows, are contained in the schedule: "Legal expenses at Sitka, \$112.50," "Belyea's bill, *re* proceedings at Sitka, \$113." Those items are supported by the Record, and inasmuch as the money was expended in behalf of the owner in protecting his schooner against the charge of violating the revenue laws of the United States, from which she was subsequently released, the Government of the United States desires to repay the claimant the amount. The further item, however, "Belyea's charge, \$600," is based upon the following testimony:

Q. Had you any other agreement with Mr. Spring as to any ^{R., 1738, line 52.} other charges?

A. Yes; in the fall of 1893. At the time it was not known whether the vessel would be back or what would be the result of the case. *There was some talk of appealing from the decision of the court at Sitka*, and a lump sum of \$600 was agreed to as the cost with respect to the claim. This was to prepare the claim and get it in and look after it until it was settled.

Inasmuch as no decree was ever entered, and consequently no appeal ever taken from Sitka, and as there is no testimony that Mr. Belyea had any connection whatever with obtaining the vessel for the owner—but on the contrary the diplomatic correspondence already cited shows that the vessel was

released by order of the Department of State of the United States—the claim for this item, which was based upon services to be performed in connection with the appeal, when a claim for appeal even was never filed, is without foundation in fact.

The item “Expenses at Victoria, \$600,” has been mentioned.

The claims “Loss of time, waiting delivery of vessel at \$100 a month, \$700; hardships suffered by master, \$500,” and almost every item thereafter until the end of the schedule are demands absolutely without foundation in the testimony. They are, moreover, personal claims of the persons named, and are therefore not within the jurisdiction of this High Commission.

Concerning the item “Personal expenses and trouble of Charles Spring, \$500,” Spring testified:

R., 1735, line 51. Q. The time that you spent here that you refer to was spent in preparing a claim against the United States for the seizure and detention of the *Henrietta*?

A. It was more particularly to collect evidence, I think it was.

Q. For a claim against the United States?

A. Yes.

Q. Had it anything to do with the defense of the suit at Sitka?

A. No.

Q. What time you spent here was in collecting evidence with Mr. Belyea to present the claim to your Government to be recovered against the United States for seizure?

A. Yes; I think that would be about right.

R., 1665, line 21. The item “105 skins sold at Sitka, \$15 a skin,” does not take into consideration the fact that the captain testifies that he obtained \$525.15 for these skins at Sitka; nor the fact that in the Argument, page 85, line 50, the statement is made “in 1892 skins were worth \$14.”

The claim of \$2,000 for depreciation in the value of the vessel rests upon no testimony whatever save that of the captain, where he says that it would have

of State of the
tem, which was
l in connection
ppeal, even was
act.

\$600," has been

delivery of ves-
ps suffered by
thereafter until
absolutely with-
they are, more-
named, and are
of this High

uses and trouble
fied:

refer to was spent
es for the seizure

idence, I think it
s?

use of the suit at

lecting evidence
r Government to
seizure?

5 a skin," does
at the captain
these skins at
t, page 85, line
ns were worth

n in the value
whatever save
it would have

cost \$200 to repair her. Spring, the owner of seven-
eighths of the vessel, testified: R., 1736, line 17.

Q. You saw the *Henrietta* afterwards, did you not?

A. No, I don't think I ever seen her here since she went away.

Fell, the owner of one-eighth of the vessel, testified R., 1741, lines 40, 37.
that when she arrived in Victoria he was absent, and that he did not see her until the 22d or 26th of March. He knew nothing of what care had been given the vessel in the meantime, and inasmuch as the owners were quarreling with the captain, as is shown by the testimony, some presumption might arise regarding this.

Q. Did you ever own any other vessel?

R., 1743, line 49.

A. Yes.

Q. What others?

A. Only two small vessels—sloops.

Q. What do you mean by a small vessel?

A. A vessel of eight or nine tons.

Q. Below the register here, I suppose?

A. Yes, below the register.

Q. Did you ever own a registered vessel before, or own an interest in one?

A. No.

He testified that the vessel was not hauled up on the beach to have her examined, and he evidently R., 1742, line 53,
knew nothing about the condition of the vessel except R., 1741, line 50.
that she was leaking a little and that her sails and ropes were worn. He did not know whether the leakage was about the centerboard or not. If it was it could have been repaired at a nominal expense.

This witness testifies regarding a sale which is cited R., 1744, line 50.
in the Argument on behalf of Great Britain. A reading of his testimony will show what weight should be attached to that offer.

The sheriff subsequently seized the *Henrietta* under R., 1745, line 40.
an execution directed against Mr. Spring for a debt not contracted in connection with the *Henrietta*, and Mr. Fell testified that they did not have time to

endeavor to sell the vessel before the sheriff had her. There is no testimony that the vessel was free of liens when the sheriff sold her, and the sum realized at that sale, as said by the High Commissioner on the part of the United States, goes a very little way in establishing the value of the ship.

R., 1747, line
22.

The Government of the United States is liable for the fair charter value of the *Henrietta* from the 6th of September, 1892, until the 23d of November, 1893, together with such losses as the owner *actually* sustained. The boats were undoubtedly damaged, legal expenses were incurred at Sitka, and the value of the skins depreciated.

sheriff had her.
was free of liens
realized at that
ner on the part
e way in estab-

tes is liable for
from the 6th of
vember, 1893,
er *actually* sus-
damaged, legal
he value of the

THE OSCAR AND HATTIE.

CLAIM No. 23.

The *Oscar and Hattie* was seized by a revenue cutter in the service of the United States in the harbor ^{R., 221, line 35.} of Attu Island on the 30th day of August, 1892, for a violation of the convention signed on the 18th day of April, 1892, between the United States and Great Britain for the renewal of the *modus vivendi* of 1891.

Attu Island is the most westerly of the Aleutian Islands, and the harbor in which the *Oscar and Hattie* was seized is in Bering Sea. The seizure was made ^{Exhibits, 220, line 57.} by the United States revenue cutter *Mohican*.

Article 3 of the *modus vivendi* of 1892 provided:

Every vessel or person offending against this prohibition in the said waters of Bering Sea, outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offense and impose the penalties for the same. *The witnesses and proofs necessary to establish the offense shall also be sent with them.*

This article is the same as Article 3 of the *modus vivendi* of 1891.

Parliament enacted in 1891 the "Seal-fishery Act, ^{Exhibit 90, G. B. Cl., 23; Ex-} 1891." ^{hibits 263.}

That act provided that Her Majesty, the Queen might, by order in council, prohibit the catching of seals by British ships in Bering Sea, or such part thereof as was defined by the said order during the period limited by the order; and "if a British ship is

found within Bering Sea, *having on board thereof fishing or shooting implements or seal skins or bodies of seals, it shall lie on the owner or master of such ship to prove that the ship was not used or employed in contravention of this act.*"

R., 1534, line 1. An order in council, dated "at the Court of Windsor, 9th day of May, 1892," was made, and instructions were issued to British cruisers necessary to enforce the provisions of the *modus vivendi* of 1892.

Exhibit 89, The President of the United States, acting through G. B. Cl., the Secretary of the Navy, issued to the commanding officer of the naval force in Bering Sea instructions for the enforcement of the terms of the *modus* of 1892.

G. B. Cl.,
23; Ex-
hibits 262.

Paragraph 2 of the instructions reads:

Any vessel found to be or to have been employed in sealing within the prohibited waters of Bering Sea, whether with or without warning, *and any vessel found therein, whether warned or not, having on board implements for taking seals or seal skins or bodies of seals, will be seized.*

Exhibits, At the time of the seizure of the *Oscar and Hattie*, 227, line 11, she had on board shooting implements and seal skins, and she was in Bering Sea.

Q. When you were seized in Gotzleb Harbor you had all your sealing equipment on board, hadn't you—your guns and all the necessary appliances for sealing—on board of the vessel?

A. On board the schooner?

Q. On board the schooner.

A. They were there, sure.

Q. And you had certain seal skins on board?

A. Yes, sir; but they were not caught in the Bering Sea.

Paragraph 3 of the *modus vivendi* of 1892, which is quoted above, provides that every vessel offending against the prohibition of sealing in the waters of Bering Sea, should be seized and detained by the officer of either Government. The construction placed upon article 3 by both Governments has been shown by the extracts from the Seal-fishery Act of 1891 and the instructions issued in accordance with the orders of the President of the United States. That construc-

and thereof fish-
bodies of seals,
ship to prove
in contravention

Court of Wind-
e, and instruc-
necessary to en-
di of 1892.

acting through
the commanding
sea instructions
modus of 1892.
ls:

employed in sealing
whether with or
whether warned
seals or seal skins

Oscar and Hattie,
and seal skins,

harbor you had all
—your guns and
on board of the

ard?
in the Bering Sea.
of 1892, which
vessel offending
waters of Ber-
d by the officer
ion placed upon
been shown by
of 1891 and the
h the orders of
That construc-

tion was that if a British ship should be found within Bering Sea having on board thereof fishing or shooting implements, or seal skins, or bodies of seals, it should lie on the owner or master of such ship to prove that the ship was not used or employed in contravention of the Convention; and any vessel found having on board implements for taking seal or seal skins, or bodies of seals, was to be seized.

The captain of the United States revenue cutter *Mohican*, finding the *Oscar and Hattie* within the waters from which she was excluded by the Convention, having on board implements for taking seals, which constituted reasonable cause for seizure as provided in the instructions issued by the Secretary of the Navy, and by the Seal-fishery Act of 1891, and having on board also bodies of seals, which placed on the owner of the ship the *onus* of proving that the ship was not used in contravention of the *modus*, as provided in the Seal-fishery Act of 1891, seized the schooner on the 30th of August, and on the 1st day of September took the vessel in tow to Unalaska, reaching there on the 5th of September.

Commander Evans, of the *Yorktown*, was in the harbor of Unalaska.

Exhibits,
262.

Exhibits,
221, lines
35, 20; Ex-
hibits, 222,
line 37.

Exhibits,
222, line 54.

Q. Yes, and what did the *Yorktown* commander—what did he do?

A. He told me to stop over until the *Melpomene* came along and he would turn me over to the *Melpomene*.

Q. That is Her Majesty's ship?

A. Yes, sir; that is Her Majesty's ship.

Q. Well, in about ten days you were ordered by Captain Parr, of the *Melpomene*, to proceed to Victoria?

Exhibits,
223, line 14.

A. Yes, sir.

Q. After leaving Captain Parr on the *Melpomene*, you proceeded to Victoria under his orders, did you not?

Exhibits,
223, line 54.

A. Yes, sir.

Q. And reported there to the admiral at Esquimaux Harbor?

A. I reported to the collector of customs.

Q. And your ship was then taken in charge?

A. Yes, sir.

Q. At any rate, you left her with the collector of customs?

A. I left her with the collector of customs, with a watchman on board of her.

The captain of the *Mohican*, in accordance with paragraph 3 of the *modus vivendi* of 1892, seized the *Oscar and Hattie*, and, as shown by the testimony, took the vessel to Unalaska, and thereafter Commander Evans, of the *Yorktown*, delivered her to Captain Parr, of Her Majesty's navy, commanding the *Melpomene*, and representing in Bering Sea "the authorities of the nation to which she belonged, who alone had jurisdiction to try the offense and impose the penalties for the same."

The authorities of Great Britain delivered the vessel to the nearest British court to be tried. That court was the Exchequer Court of Canada, British Columbia admiralty district, and thereafter the *Oscar and Hattie* was regularly tried and condemned and forfeited.

Ex. No. 85,
Exhibits,
241.

The judgment of Sir Matthew Baillie Begbie, of the Exchequer Court of Canada, is printed in full. The judgment found not only that there was reasonable cause for the seizure made by the captain of the United States revenue-cutter *Mohican*, but found the *Oscar and Hattie* guilty of acts in contravention of the *modus vivendi* of 1892.

Exhibits,
247.

Exhibits,
248, line 10.

An appeal was taken to the Supreme Court of Canada, and thereafter the case came on to be heard in that court, and the judgment of the lower court was set aside and reversed.

Exhibits,
253, line 3.

In the opinion of the Supreme Court of Canada, reversing the lower court, it was stated that sufficient *prima facie* proof of guilt of the *Oscar and Hattie* was undoubtedly afforded by the fact that the ship was found within the boundaries of prohibited waters, with shooting implements and seal skins on board, and that the *onus* was cast upon the owners to remove the presumption, but that the evidence given in the court

below had established that the vessel committed no act in violation of the convention of 1892 or in violation of Her Majesty's order in council pursuant to the Bering Sea fishery act of 1891.

The *Oscar and Hattie* had been sold and the owners claim to have suffered a loss as the result of the schooner's sale for less than her real value. The proceeds of the sale, together with costs, were decreed to the owners.

The United States contend that the captain of the revenue cutter *Mohican* had reasonable cause for seizing the *Oscar and Hattie*. The construction placed upon the *modus vivendi* of 1892 by both Governments, as contained in the Fishery act of 1891, and in the instructions of the Government of the United States to her cutters in Bering Sea, was a reasonable and, moreover, the controlling construction.

The captain of the *Mohican* found the vessel within the prohibited waters, having seal skins aboard and "shooting implements," declared to be, from as authoritative sources as the Parliament of Great Britain and the Executive Department of the Government of the United States, reasonable ground for seizure, and thereupon, in the performance of his duty, seized the vessel and turned her over to the "authorities of the nation who alone had jurisdiction to try the offense and impose the penalties for the same."

The Government of Great Britain had, by Parliamentary act, declared what conditions would constitute reasonable grounds for seizure, and one of her citizens can not recover damages from the United States because the officer of one of their cutters, finding such evidence constituting reasonable cause for seizure, performed his duty.

The cruisers of each nation in Bering Sea, under the terms of the *modus vivendi*, represented the sovereign power, not only of the country whose flag they flew, but also of the other nation party to the Con-

vention, for each had authority to seize ships of both nations. The cutter of the United States acted upon the grounds declared to be reasonable by Great Britain, and a citizen owing allegiance to Her Majesty's Government can not recover damages from the United States.

The final clause of article 3 of the *modus vivendi* provides:

The witnesses and proofs necessary to establish the offense shall also be sent with them.

Captain Parr, representing in the waters of the Bering Sea the sovereign power of Great Britain, was in possession of all the proofs and in communication with all the witnesses who were assembled in the harbor at Unalaska, and had he not decided to order the *Oscar and Hattie* to Victoria, the vessel would have been released. The cruiser of the United States had no further control or power over the vessel after her surrender to the authorities of the nation "having jurisdiction to try the offense and impose the penalties," and without the decision of the commander of Her Majesty's fleet in Bering Sea, the *Oscar and Hattie* would not have been condemned and forfeited. The commanding officer of the *Melpomene* having ordered the schooner to Victoria for trial, the owners, who are citizens of Great Britain, can not recover damages from the United States arising by reason of his act.

The courts of Great Britain found that there existed *reasonable cause* for the seizure and the lower court found that there existed *adequate cause* for her condemnation and forfeiture. The higher court reversed the finding of the trial court only upon the question of the existence of *adequate cause* for condemnation.

Reasonable cause for the seizure being established, the United States are not liable for the loss to the

ships of both
 tes acted upon
 by Great Brit-
 Her Majesty's
 om the United

modus vivendi

ublish the offense

waters of the
 at Britain, was
 communication
 embled in the
 iced to order
 vessel would
 United States
 he vessel after
 ation "having
 ose the penal-
 commander of
 he *Oscar and*
 and forfeited.
omene having
 l, the owners,
 a not recover
 by reason of

hat there ex-
 nd the lower
 cause for her
 her court re-
 nly upon the
 ause for con-

g established,
 e loss to the

claimants. This is the law as uniformly held, and although it may work hardship in individual cases, the decisions of courts have established it as the rule of law most universally just.

The decision of international tribunals and of the courts of both countries wherein this rule of law has been declared, have been cited and commented upon in another part of this argument.

THE WINIFRED.

CLAIM No. 24.

R., 1509., line 40. The *Winifred* was seized on the 20th of July, 1892, in Bering Sea, for a violation of the *modus vivendi* of 1892.

The commander of the United States revenue-cutter *Richard Rush* upon that day made this entry in the log:

At 8.15 stopped and boarded schooner *Winifred*, of Victoria, G. M. O. Hansen master. Found her with four dead unskinned fur seals on deck, six others salted, and one taken later from the *Winifred's* boats, all of which fur seals the captain admitted had been taken in Bering Sea. The evidence of violation of the convention between the United States and Great Britain being complete, seized the vessel and placed a prize crew of four men, under charge of Lieutenant Dodge, on board, and began towing her to Unalaska at 11.15 p. m.

Pursuant to the Convention between the United States of America and Great Britain for the renewal of the *modus vivendi* of 1891 for the year 1892, the *Winifred* was towed to Unalaska and "handed over as soon as practicable to the authorities of the nation to which she belonged," for the purpose of having the crew tried and the vessel condemned.

R., 1510, line 32. Under date of July 27, Captain Coulson, commanding the *Richard Rush*, made this entry in his log:

At 10 a. m. United States steamer *Yorktown* arrived in port. Commanding officer paid official call on Commander Evans. Later Commander Evans and Captain Parr, Royal Navy, came on board and conferred with commanding officer as to disposition of seized schooner *Winifred*.

This entry shows that prior to the 27th day of July Captain Coulson had arrived at Unalaska with the *Winifred* in tow.

Captain Coulson testified that "Captain Parr, of the R., 1511, line 30. Royal Navy, known as the senior officer of Her Majesty's fleet in the Bering Sea waters in connection with the *modus vivendi*, and Capt. Robley D. Evans, of the United States Navy, and the commanding officer of the *Yorktown*, also the senior officer of the American fleet, and Captain Coulson, of the revenue cutter *Rush*," were together in conference on the 27th of July.

As the result of that conference Captain Coulson advised the Secretary of the Treasury at Washington as follows:

On July 27 Commander Evans, United States Navy, and R., 1515. *Capt. A. H. Chase Parr, Royal Navy, commanding Her Majesty's naval force in Bering Sea*, met by appointment on board the *Rush*, and after a full discussion of the matter it was agreed on the part of Captain Parr that his Government would waive the right of custody of the seized vessel until she had been tried by the United States courts for violation of the United States revenue laws, provided that in case of failure to convict her on those charges the vessel, her cargo, outfits, etc., and master and crew, were to be turned over to the representatives of Her Majesty the Queen of England, at Victoria, British Columbia, for trial on the charge of violation of the terms of the existing *modus vivendi*.

Acting under instructions received from Commander Evans, United States Navy, I have therefore made formal seizure of the *Winifred*, and arrested her master, G. M. O. Hansen, and crew, for violation of the United States revenue laws, as above cited, and as soon as the necessary papers can be procured, she will be delivered into the custody of Lieutenant-Commander Tanner, of the United States Navy, commanding U. S. steamer *Albatross*, for delivery into the hands of the United States district attorney at Sitka.

This letter discloses that subsequent to the time of the seizure of the *Winifred* in Bering Sea, on the 20th of July, at which time she was seized, as stated in the log of the *Rush*, for violation of the Convention between the United States and Great Britain, Captain

Coulson had received information that the *Winifred* had violated the revenue laws of the United States of America.

- R., 1518, line 26. This information Captain Coulson did not have at the time of the seizure of the *Winifred* in Bering Sea, he being afterward informed of the facts by Captain Hooper, who was in command of the United States revenue cutter *Corwin*, in a letter which was the basis of the conference between Captain Parr, of Her Majesty's Navy, and Commander Evans, of the United States Navy, at which "it was agreed on the part of Captain Parr that his Government would waive the right of custody of the seized vessel until she had been tried by the United States courts for violation of United States revenue laws."

This agreement between Captain Parr, who represented in person the sovereignty of Great Britain, and Commander Evans, of the United States Navy, was made in the port of Unalaska, in the Territory of Alaska, and within the jurisdiction of the United States of America.

- The *Winifred* was accordingly released from the charges preferred for a violation of the Convention between Great Britain and the United States, by the authorities of Great Britain, and formally re-seized within the territory and jurisdiction of the United States, on a charge of violating their revenue laws.

On the 27th of July Captain Coulson entered in his log:

- R., 1511, line 44. By direction of Commander Evans, the vessel was formally declared seized for violation of the revenue laws.
- Exhibit 111, G.B., claim 24; Exhibits, p. 327. Thereafter the *Winifred* was taken to Sitka by the *Albatross*, where she, with her boats, tackle, apparel, furniture, and cargo, was libeled for a violation of the revenue laws of the United States.
- Exhibits, p. 332. Her owner, Charles Spring, filed an answer to the merits, not raising the question of jurisdiction.
- A stipulation was signed agreeing that testimony

the *Winifred*
United States

l not have at
a Bering Sea,
s by Captain
United States
was the basis
of Her Maj-
ty United
on the part
would waive
sel until she
rts for viola-

; who repre-
reat Britain,
States Navy,
he Territory
f the United

ed from the
Convention
ates, by the
lly re-seized
the United
venue laws.
n entered in

l was formally
ws.

Sitka by the
kle, apparel,
violation of

answer to the
iction.

at testimony

be taken in the city of Victoria on behalf of the claimant to the vessel pursuant to which the testimony of Charles Spring, the owner of the vessel, was taken in his own behalf. Exhibits, p. 364.
Exhibits, p. 365.

On the 1st of March, 1894, the case came on to be heard in open court, on the pleadings and proofs, and a decree was entered "that said schooner *Winifred*, her boats, tackle, apparel, furniture, and cargo, and all property found upon or appertaining to said vessel be, and the same are hereby, condemned as forfeited to the United States." Exhibits, p. 369.
Exhibits, p. 334.

On the 26th of April, 1894, the court decreed that the *Winifred*, her boats, tackle, apparel, furniture, and cargo should be sold after the usual notice. Exhibits, p. 370.

In accordance with the decree of the court the *Winifred* was sold and became a total loss to the owner. Charles Spring, the owner, never filed a claim for appeal or perfected an appeal after having submitted to the jurisdiction of the court and having defended the case on its merits. Exhibits, p. 111.

The Government of the United States claims that it is not liable for the loss to the owner of the *Winifred*. The vessel was seized in Bering Sea for a violation of the *modus vivendi*, and offered, in accordance with the terms of the *modus*, to the authorities of the nation having jurisdiction to try the offense and impose the penalties.

Captain Parr, of Her Majesty's Navy, representing the authority of Her Majesty in the waters of Bering Sea, and the sovereign power of Great Britain, ordered that the *Winifred* should be released from trial for a violation of the Convention between the two Governments, and agreed that she should be re-seized by the United States and proceeded against for a violation of its revenue laws.

In the Argument filed on behalf of Great Britain is the assertion: Arg. on behalf of G. B., p. 177, line 31.

Under said *modus* it was incumbent on the United States

to forthwith deliver the vessel to the British authorities, and Commander Parr had no authority whatever to give the alleged consent, and thereby waive any delivery of the vessel to the British authorities.

The Government of the United States contends that the delivery of the *Winifred* to Commander Parr was a delivery "to the authorities of the nation alone having jurisdiction," and that Commander Parr, representing as he did the sovereign power of Great Britain, presumptively had authority to consent to a waiver of the rights of Great Britain, and that his consent is binding upon and estops that nation from making a claim against the United States.

British Arg.,
p. 178.

The Argument on behalf of Great Britain relating to the claim of the *Winifred* contains a letter from the Secretary of State for the United States under date of October 31, 1894, by which it appears that the Department of State had confused the case of the *Winifred* with the claim of the *Henrietta*. The letter is used for the purpose of showing an admission on the part of the United States.

The letter of the Acting Secretary of the Treasury, written under date of November 13, 1895, subsequent to the letter of Mr. Gresham and prior to the date of the treaty under which this High Commission convenes, states the position of the United States with reference to the claim of the *Winifred*.

R., 1800, line 40. The Honorable the SECRETARY OF STATE:

SIR: Referring to my telegram of the 9th instant, I have the honor to state that the British schooner *Winifred* was seized by steamer *Rush* July 20, 1892, for violation of the proclamation of the President of the United States and the British Bering Sea act of Parliament of 1891, and the order in council of 1891, and the order in council of May 9, 1892.

The seizure was made about 15 miles from Annak Island. After being towed to Unalaska, information was furnished by Capt. C. L. Hooper, commanding the revenue steamer *Corwin*, to the effect that the *Winifred* was liable to seizure and her master and crew to arrest for violation of the United States revenue laws, previous to entering the Bering Sea.

authorities, and
ver to give the
delivery of the

ates contends
mmander Parr
e nation alone
der Parr, rep-
ower of Great
to consent to
, and that his
ut nation from
tes.

Britain relating
a letter from
l States under
t appears that
the case of the
a. The letter
admission on

of the Treas-
13, 1895, sub-
nd prior to the
h Commission
United States
ifred.

instant, I have
er *Winifred* was
violation of the
l States and the
1, and the order
of May 9, 1892.
h Annak Island.
h was furnished
evenue steamer
liable to seizure
on of the United
e Bering Sea.

Upon consultation between Commander Evans, U. S. N., and Captain Parr, of Her Majesty's Navy, the latter waived his Government's right of custody until she could be tried for violation of the United States revenue laws.

By direction of Commander Evans, the *Winifred* was formally seized for violation of the United States revenue laws and taken to Sitka by the *Albatross*. She was subsequently condemned by the United States court at Sitka and sold, and the money has been turned into the Treasury.

Respectfully, yours,

W. E. CURTIS, *Secretary*.

The United States deny all liability for damages sustained by the owner of the *Winifred*, but the schedule attached to the claim in the Argument contains some items, reference to which will be made.

The seal skins charged for were all taken in violation of the law of the nation to which the owner of the *Winifred* owed allegiance, and to award any sum for a catch of seals made contrary to the laws of both countries would be against public policy. This rule of law seems to have been partially regarded, for no claim for a prospective catch which would have been taken in violation of the Convention of 1892 between the United States and Great Britain is made.

The value of this vessel of 13 tons is placed at \$2,000. She was built in 1869, repaired somewhat in 1892, and the value of \$770 placed upon her by the appraisers was a liberal one. Exhibit, 330,
line 60.

There is no testimony in the Record upon which to base the item "Time and expenses of owner, \$200," and there is no evidence that the crew suffered hardships or were detained. The Captain was detained at Sitka because he was arrested for a violation of the laws of the United States.

These claims are, moreover, personal claims, not included in the Convention.

THE WANDERER.

CLAIM No. 25.

This claim is submitted under the terms of the fifth paragraph of the convention creating this High Commission.

The Government of the United States, animated by a sense of justice and by a desire that all liability should be definitely and fully settled and determined, and all possible claims and causes of complaint or wrongdoing removed, was willing that all claims which the people of Her Majesty's Government believed themselves to have suffered by reason of the acts of the Government of the United States in asserting her supposed rights in Bering Sea should be investigated, and full redress afforded by this High Commission, and consented to the submission of these additional claims set out by name in paragraph 5 of the convention of February, 1896, although not admitting any liability.

Par. 5, convention
Feb. 8,
1896.

The claimants availed themselves of the opportunity afforded for the submission of their alleged grievance and produced witnesses to inform the High Commission of the ground of their complaint.

The United States, for the first time informed of the nature of this claim, insist that the testimony clearly shows that the claimants suffered no damages arising from any act or omission on the part of any officer in their service, or on the part of any agent clothed with their authority.

The *Wanderer*, as claimed by the master and owner of the vessel, had been sealing in the spring of 1889 on the west coast of Vancouver Island.

R., 1537, line
10.

In the early part of May, after having engaged an Indian crew for sealing in Bering Sea, the vessel proceeded up the west coast of Vancouver Island until off Cape Scott, a distance of nearly 1,000 miles from Bering Sea, when the Indians refused to proceed further on the journey toward Bering Sea.

Captain Paxton, questioned as to the reason for the interruption of the voyage, testified:

Q. What was the occasion of their going back on you? R., 1537, line 19.

A. They heard from another vessel that the Americans were threatening to make seizures, and they refused to go.

Q. What reason did they then assign to you for refusing to go?

A. All they wanted to know was whether I was a rich man or a poor man; if I had lots of money to pay them if I got seized. I told them no. They then refused to go.

Q. Was there any reference made by them to the fact of their having been in Bering Sea before and after (having) being seized? R., 1537, line 34.

A. Yes. They said they had suffered great hardships and would not go again unless I would guarantee their pay for what skins they might have when the vessel got seized.

Q. What did you do then?

A. Went back to Victoria. R., 1537, line 43.

On cross-examination Captain Paxton testified:

Q. You say these Indians threatened you about the 9th or 12th of May? R., 1538, line 25.

A. Yes; something like that.

Q. And they were afraid they would not get their pay?

A. Yes, sir.

Q. For the skins they actually took?

A. Yes; that is, if the vessel was seized, and I don't think they would either.

Q. They asked you if you were a rich man or a poor man? R., 1538, line 43.

A. Yes.

Q. If you had been a rich man they would have gone?

A. Yes.

Q. And because you told them you were a poor man they would not go?

A. No.

The only other witness produced on behalf of Great Britain who had a personal knowledge of the occur-

rences was Auguste Bjerre, mate of the vessel at the time.

R., 1541, line
40.

Q. Did you continue to go to Bering Sea?

A. No, sir; we had to turn back.

Q. Why?

A. Because the Indians refused to go.

Q. Will you say what was the occasion of their refusing to go to Bering Sea?

A. The Indians were scared to go; they were scared of seizure. Some of them, I believe, had been seized before, and they had been talking with other Indians while they were away from the vessel out hunting, and they were scared of the vessel being seized, and as they knew that Captain Paxton had nothing but the vessel they were afraid they would get no pay if they were seized.

R., 1541, line
65.

Q. Now, off Cape Scott, on the occasion in question, what was the conversation?

A. Well, they were scared, as some of them had been seized before. They were scared to go into the Bering Sea with Captain Paxton. They knew that he had nothing but his vessel, and they were scared that if the vessel was seized and he lost it they would get no pay for the season's work.

R., 1542, line
7.

Q. Was there any other reason assigned for their refusing to go to Bering Sea.

A. No, sir; not that I know of.

On cross-examination this witness testified as follows:

R., 1544, line
21.

Q. Did anyone on the *Sapphire* tell your Indians that there were going to be seizures in Bering Sea?

A. I do not know where the Indians heard that there were going to be seizures in Bering Sea. The first time they spoke about it was at sea.

Q. Did you know where they heard it?

A. They heard it in their canoes while they were out hunting.

R., 1544, line
38.

Q. Captain Paxton himself did not want to turn around because he was afraid of seizure?

A. Captain Paxton, I fancy, wanted to go to the Bering Sea if he could get his Indians to go.

Q. And it was because the Indians did not wish to go with him that he could not go?

A. Yes; that was the reason that he could not go.

R., 1544, line
62.

Q. Confine yourself to the one time, and tell us what the said then.

A. The Indians said that suppose they went to Bering Sea and the vessel was seized; they knew that Captain

the vessel at the

?

of their refusing

they were scared
when seized before, and
while they were away
scared of the vessel.
Captain Paxton had nothing
to get no pay if the

on in question, when

them had been seized
in the Bering Sea with Captain
Paxton, but his vessel, and
he lost his life.

for their refusing

testified as follows:

for Indians that there

heard that there was
first time they spoke

they were out hunting
want to turn around

go to the Bering Sea

not wish to go with

could not go.

and tell us what they

they went to Bering

knew that Captain

Paxton had no money, only the vessel, and they could not get their pay; they would lose their summer's work. They were talking about their women and little ones starving at home, and all that kind of thing.

In the pleadings filed in this claim on behalf of Great Britain before this High Commission, the allegation is made that information of the proclamation of the President of the United States of America, issued on the 21st day of March, 1889, came to the knowledge of the members of the crew of the *Wanderer*; but there is no testimony in the Record that Captain Paxton ever knew that the proclamation was made by the President, that any member of the crew of the *Wanderer* had any knowledge of such a proclamation, or that the refusal of the Indians to proceed to Bering Sea was based upon a knowledge of this proclamation. The only reason given for the breaking up of the voyage is, as shown in the testimony quoted above, that the Indians were afraid that Captain Paxton would not be able to pay them for the seals they had already taken in case the vessel should be seized.

If Captain Paxton had been a man financially responsible, the Indians, as shown by the testimony of both witnesses, would have proceeded on their voyage. The Argument filed on behalf of Great Britain, though containing a reference to the proclamation of the President, makes no claim that the proclamation was the direct cause of the interruption of the *Wanderer's* voyage, or that it was even remotely connected with the refusal of the Indians to continue the voyage beyond Cape Scott. Even though the claim were made, it is not apprehended that it would be seriously advanced to base a demand for damages upon.

The only evidence in the Record, moreover, of the publication of the proclamation of the President of the United States, under date of March 21, 1889, is a letter from William Windom, Secretary of the

Treasury, addressed to Capt. L. G. Shepard, commanding officer of the revenue cutter *Rush*. This letter contains the first instructions given to the commanding officer of the cutter which was to patrol Bering Sea in the year 1889, and bears date May 23, 1889. In his testimony the captain of the *Wanderer* states that the panic of the Indians occurred about the 9th or 12th of May. It is certain that the *Wanderer* was in the port of Victoria May 23, 1889, for upon that day a charter party was made. The publication of the proclamation of the President after the date of the mutiny of the Indians, and instructions given to the captain of a cutter in the service of the United States after the date of the refusal of the Indians to proceed to Bering Sea, will assuredly not be advanced as the cause of the interruption of the voyage of this vessel.

The findings of fact of the Tribunal of Arbitration at Paris, discloses that the nature of the warnings given to the various vessels, whose claims are scheduled between pages 1 and 60, was an actual notice given by an officer of one of the cutters in the service of the Government of the United States, and "that the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when the same were made, from the executive department of the Government of the United States, instructions."

There is no evidence of any actual notice given to or any seizure of the *Wanderer*.

When the Government of the United States consented to the submission of this claim to this High Commission, it was undoubtedly represented by the ambassador negotiating the Convention on the part of Her Majesty that the testimony of the claimant would develop the fact that some actual warning of the nature found by the Paris Tribunal of Arbitration to have been given to certain other vessels was

R., 1537, line 40.

R., 1833, line 51.

Award of the Tribunal of Arbitration constituted under the treaty of Feb., 1892.

. Shepard, com-
ter *Rush*. This
given to the com-
h was to patro-
bears date May
tain of the *Wan-*
Indians' occurred
s certain that the
ia May 23, 1889
was made. The
ne President after
ans, and instruc-
ter in the service
of the refusal of
ea, will assuredly
ne interruption of

nal of Arbitration
he warnings give
ns are scheduled
tual notice given
the service of the
and "that the sail-
sels were made by
States, the com-
l times when the
tment of the Gov-
ructions."
ual notice given to

United States con-
claim to this High
represented by the
ention on the part
y of the claimant
actual warning of
ibunal of Arbitra-
other vessels were

given by an officer in the service of the United States Government, or by someone acting under the authority of the said Government, to the *Wanderer*. The testimony of the claimants has been taken, and it is apparent that the ambassador of Her Majesty was misinformed by the parties in interest as to the nature of this claim.

That no damages can be awarded for the interruption of a voyage, the sole reason for which was that some uncivilized Indians aboard the vessel had received from other uncivilized Indians some diaphanous rumor that there were seizures being made in Bering Sea, is beyond question.

The captain of the *Wanderer* landed the Indians who had refused to proceed with him, and concluding that it was too late to pick up a crew on the west coast of Vancouver Island, made no attempt to secure another crew, but proceeded to Victoria.

He made no attempt to secure a crew of white hunters, and gives as the reason for his failure to do so the fact that "A poor man could not afford to employ them."

The rule of law is well settled that a claim for damages can not be based solely upon the fact that the peculiar financial conditions of the individual complaining were the cause of the injury. If Captain Paxton had been in a financial condition to operate his business he would have had no trouble with his Indian crew and there would be no claim before this High Commission.

The Argument on behalf of Great Britain makes no reference to the earnings of this vessel under the agreement, in pursuance of which the vessel proceeded to Shumagin Island at the entrance to Bering Sea, subsequent to the time of the refusal of the Indians to continue the voyage, and brought down to Victoria a quantity of skins, for which service the vessel received payment. On the contrary, the claim

R., 1538, line
64;

R., 1539, line
55;

R., 1540, line
6.

R., 1833, line
51.

R., 1900, line 13. is made for the value of the use of the *Wanderer* during the entire season of 1889, although she left Victoria for a voyage to Shumagin Island on the 23d of May. Possibly this charter party is not referred to because of the fact that the charter value of this vessel, viz, \$100 per month, in addition to the wages of the crew and the captain, does not compare favorably with the grossly exaggerated claim of \$18,447 for the use of this vessel from the 10th day of July, or the beginning of the sealing season, to the 26th or 25th of August.

R., 1538, line 10. A claim is made in the schedule attached to the statement of the damages suffered by the owners of this vessel in the argument on behalf of Great Britain for "legal and other expenses, \$250," and "time and expenses of owner, \$200."

R., 1536, line 66. There is no testimony in the Record to support either claim, and no reference is made to any testimony. The *Wanderer* was not outfitted for a voyage to Bering Sea, and suffered no loss on account of expenditures for supplies.

Her charter value would be determined on a different basis than that made use of in estimating the charter value of a vessel completely outfitted for a sealing voyage.

The Government of the United States contends that no loss accrued to the schooner *Wanderer* or her owners as disclosed by the testimony for which it is chargeable, and that no sum should be awarded the claimants.

ROBERT LANSING.
CHARLES B. WARREN.

DON M. DICKINSON.

the *Wanderer*
 though she left
 and on the 23d
 is not referred
 er value of this
 on to the wages
 compare favor-
 aim of \$18,447
 h day of July,
 , to the 26th or

attached to the
 y the owners of
 of Great Britain
 ' and "time and

to support either
 y testimony.
 for a voyage to
 ount of expend-

ned on a differ-
 estimating the
 y outfitted for a

States contends
Wanderer or her
 y for which it is
 be awarded the

LANSING.
 S B. WARREN.

CONTENTS.

	Page.
INTRODUCTORY STATEMENT	1-12
<i>As to reflections upon the United States</i>	1
Representative statements in the Argument of Great Brit- ain, and comments thereon	5
Alleged "Insults to flag," and comments	8
Comparative unimportance of the claims	11
SUMMARY OF POSITIONS IN REPLY	12-19
THE INTERNATIONAL LAW APPLICABLE HERE	19-39
The questions ruled by authoritative and positive law, as settled by treaties, judgments of international tribunals and of courts	19
As applied to the claims	20
SCOPE AND INTERPRETATION OF THE CONVENTION	22-39
Jurisdiction under	22, 24, 33
Construction in general	23
Prior diplomatic correspondence can not enlarge	23, 24, 32
No ambiguity; plain reference of specific matters to the Commission	25
Precedents and authorities	27
No other claims referred than those specified	32
Analysis of convention	33
Claims of specified "persons" referred	36, 37
PERSONS IN WHOSE BEHALF GREAT BRITAIN CAN NOT INTER- VENE UNDER THE CONVENTION	40-66
<i>British subject domiciled in the United States a civil citizen of latter nation</i>	40
Term "British subjects" intentionally omitted	41
Evidence of domicile	43
Owes obedience to laws of the United States	44
And allegiance to their sovereign claims	45

PERSONS IN WHOSE BEHALF GREAT BRITAIN CAN NOT INTER- VENE UNDER THE CONVENTION—Continued.	Page.
Great Britain can not make reclamation against the United States for.....	46
Limit of Great Britain's right to intervene for protection..	49
The Treaty of 1815 covers case of	51
<i>Original citizens of United States even if domiciled, if not naturalized, in Great Britain, not persons for whom that nation can make reclamation</i>	53-66
Authorities in British Argument analyzed	54
Such citizens still owe allegiance to sovereign claims and extraterritorial laws of United States.....	59
Nation of domicile can not make reclamation against country of original allegiance for injuries suffered in violating such allegiance and laws	63
THE CLAIMS HERE NOT CLAIMS OF NATION	66, 84
VESSELS—REGISTRY AND FLAG NOT MATERIAL HERE.....	68-70
VESSELS—NATIONALITY FOLLOWS OWNERSHIP, NOT OWNER- SHIP NATIONALITY	71-81
Registry by British and American authorities not conclu- sive against anyone except person securing it	73
It is a municipal regulation only	74
Authorities in British argument analyzed	79
Registry, not effective like a "sea letter" or "ship's pass"..	81
THE SPECIFIC CLAIMS ELIMINATED BECAUSE OF CITIZENSHIP, CIVIL OR POLITICAL.....	86-93
COMPENSATION OR "MEASURE OF DAMAGES".....	93-148
<i>Prospective Catch, loss of Catch, etc</i>	93
Prospective Catch—The Judgment of Geneva	94
Error in opposing argument corrected	94
Prospective Catch—British and American authorities	101
Prospective Catch—Judgments of other International Tribunals	105
Prospective Catch—Other judgments of the courts	109
Prospective Catch—Authorities in opposing argument ana- lyzed	110
<i>Compensation—Warnings</i>	116
No prospective catch	116
Proper measure	124

OT INTER-	
he United	Page.
.....	46
tection..	49
.....	51
ed, if not	
hom that	
.....	53-66
.....	54
claims and	
.....	59
st country	
ating such	
.....	63
.....	66, 84
E.....	68-70
T OWNER-	
.....	71-81
ot conclu-	
.....	73
.....	74
.....	79
's pass" ..	81
IZENSHIP,	
.....	86-93
.....	93-148
.....	93
.....	94
.....	94
ities	101
ernational	
.....	105
s	109
ament ana-	
.....	110
.....	116
.....	116
.....	124

CONTENTS.

III

COMPENSATION OR "MEASURE OF DAMAGES"—Continued.		Page.
<i>Punitory or vindictive damages</i>		126
Alabama Claims case not in point		126
The charge of wantonness		129
Review of the authorities		131
<i>Preposterous claims</i>		133
Experience under other conventions		133
Comparison with precedents		137
<i>Personal claims for damages for false imprisonment, etc</i>		138
<i>Claims for legal services</i>		141
<i>The measure of value of seal skins</i>		141
<i>Interest as damages</i>		143
Interest in lieu of future earnings and the future earnings also—legal absurdity		143
The law as to interest—authorities		144
THE COSTS IN SAYWARD CASE		148
THE ADDITIONAL CLAIMS		153
THE "OSCAR AND HATTIE" CASE	155,	477
OBSERVATIONS APPLYING ONLY TO LAW ON CERTAIN CLAIMS		156
<i>The "Pathfinder" in Neah Bay</i>		156
<i>The "Black Diamond," No. 5</i>		158
<i>James Gaudin's "personal" claim</i>		158
<i>The Carolena, Onward, and Thornton as to abandonment by claimants</i>		158
UNCERTAIN CHARACTER OF SEAL HUNTING		177
NO DEFINED "SEALING GROUNDS" IN BERING SEA		209
DURATION OF THE SEALING SEASON IN BERING SEA		228
"METHOD FOR COMPUTING THE ESTIMATED CATCH" DIS- CUSSED		247
THE VALUE OF SEAL SKINS		258
EVIDENCE RELATING TO VALUE OF VESSELS		265
<i>The Carolena</i>		303
<i>The Thornton</i>		305
<i>The Onward</i>		308
<i>The Anna Beck</i>		310
<i>The Grace and the Dolphin</i>		314
<i>The Ada</i>		315

	Page.
PERSONAL CLAIMS OF CAPTAINS AND MATES	319
THE CAROLENA.....	337
THE THORNTON.....	357
THE ONWARD.....	364
THE FAVOURITE.....	369
THE BLACK DIAMOND (1886).....	375
THE W. P. SAYWARD.....	382
THE ANNA BECK.....	388
THE ALFRED ADAMS.....	392
THE GRACE AND THE DOLPHIN.....	395
THE ADA	402
THE TRIUMPH (1887)	408
THE JUANITA	414
THE PATHFINDER (1889)	418
THE BLACK DIAMOND (1889) AND THE LILY	423
THE MINNIE	437
THE TRIUMPH (1889).....	442
THE ARIEL	447
THE KATE	457
THE PATHFINDER (1890)	462
THE HENRIETTA	466
THE OSCAR AND HATTIE.....	477
THE WINIFRED	484
THE WANDERER	490

Page.
..... 319
..... 337
..... 357
..... 364
..... 369
..... 375
..... 382
..... 388
..... 392
..... 395
..... 402
..... 408
..... 414
..... 418
..... 423
..... 437
..... 442
..... 447
..... 457
..... 462
..... 466
..... 477
..... 484
..... 490